In the
United States Court of Appeals
For the Seventh Circuit

No. 11830

OTTO EISENSCHIML, Plaintiff-Appellant, vs. FAWCETT PUBLICATIONS, INC. Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. — Honorable Philip L. Sullivan, District Judge.

APPENDIX TO APPELLANT'S BRIEF.

ELMER GERTZ and IRWIN S. BASKES
Attorneys for Plaintiff-Appellant
120 South LaSalle Street
Chicago 3, Illinois

October 26, 1956

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

PAGE

Docket Entries 1

Statement under Rule 10(b), United States Court of Appeals, Seventh Circuit 6

Placita 9

Complaint, filed September 16, 1953 10

Answer, filed November 9, 1953 14

Plaintiff's motion for Summary Judgment, (Pl. Ex. 7), filed December 14, 1953 16

Affidavit of Otto Eisenschiml in support of motion for summary judgment 17

Exhibit "A"—Excerpts from July 1947 issue of True 30

Exhibit "B"—"A Shelf of Lincoln Books. A critical, selective Bibliography of Lincoln", by Paul M. Angle 36

Exhibit "C"—February, 1953 issue of True magazine's America's Greatest Unsolved Murder by Joseph Millard—Comparison with original works of Otto Eisenschiml 38

Affidavit of Joseph Millard, filed January 28, 1954 66

Transcript of Proceedings had on February 11, 1954—Colloquy 68-69

Order, February 11, 1954—Denying plaintiff's motion for summary judgment; cause referred to Special Master J. O'Shaughnessy 69

Defendant's Response to Plaintiff's request for admissions, filed February 25, 1954 69

Answers to Interrogatories, filed March 1, 1954 73

Defendant's Response to Plaintiff's request for admissions, filed March 8, 1954 75

PAGE

Defendant's response to Plaintiff's request for additional admissions, filed October 5, 1954 76

Deposition of Joseph John Millard—
Direct Examination 77
Cross Examination 89
Redirect Examination 114
Recross Examination 122

Deposition of Ralph Daigh—
Direct Examination 124
Cross Examination 127
Redirect Examination 128

Interrogatories propounded by plaintiff and defendant to Mrs. Joseph J. Millard, filed November 22, 1954 .. 129

Cross-Interrogatories propounded by the plaintiff, Otto Eisenschiml, to Mrs. Joseph J. Millard (without prejudice to objections to direct interrogatories), filed November 22, 1954 131

Deposition of Mrs. Joseph J. Millard, on written interrogatories and cross-interrogatories, filed December 3, 1954 133
Answers to interrogatories 133
Answers to cross-interrogatories 135

Report of Proceedings 136-292

Colloquy 155-156, 290-292

Notice re: Master's report, filed December 28, 1955 322

Special Master's Report under order of reference, filed December 28, 1955 323

Certificate of mailing of Master's report 348

Notice of filing objections to Special Master's report, certain exhibits and suggested findings, filed January 4, 1956 349

PAGE

Exceptions of plaintiff to Special Master's report, filed January 4, 1956 349-357

Exhibit "A"—Excerpts from plaintiff's attorney's letters to Special Master Joseph A. Graber 358

Exhibit "B"—Plaintiff's suggested conclusions of law 359

Plaintiff's Suggested Findings of Fact, filed January 4, 1956 363-473

Report of Joseph A. Graber, Special Master in Chancery, with respect to the objections filed to his report bearing date of December 27, 1955, filed January 20, 1956 473

Letters attached to Final Report:

January 10, 1956—To Hon. J. A. Graber and Messrs. Kirkland, Fleming, Green, Martin & Ellis, from E. Gertz 477

January 12, 1956—To Honorable Joseph A. Graber from J. B. Martineau and D. H. Reuben 478

Certificate of mailing of Master's Final Report 480

Notice of filing objections to the Special Master's final report and renewing objections to Special Master's original report, filed January 24, 1956 481

Exceptions of plaintiff to Special Master's final report, filed January 24, 1956 482

Exhibit "A"—Letter addressed to the Hon. Joseph A. Graber, dated January 13, 1956, from Elmer Gertz 484

Memorandum of Judge Philip L. Sullivan, filed April 26, 1956 486

Judgment Order, filed April 30, 1956 491

Notice of Appeal, filed May 22, 1956 494

Certificate of mailing of notice of appeal 495

PAGE

Statement of points, filed May 29, 1956 496

Order, June 4, 1956—Staying proceedings upon filing of supersedeas bond 498

Order, June 5, 1956—Approving supersedeas bond 498

Petition, filed June 28, 1956 498

Partial Satisfaction, filed June 28, 1956 500

Order, July 9, 1956—Pursuant to stipulation authorizing Clerk of the District Court to prepare and transmit record on appeal pursuant to provisions of Rule 12 of the rules of the United States Court of Appeals, Seventh Circuit, effective July 1, 1956 501

Certificate of Clerk of the District Court, dated July 30, 1956 502-505

WITNESSES.

For Plaintiff:

Virginia M. Goldberg—
Direct Examination by Mr. Gertz 136
Cross Examination by Mr. Martineau 137
Redirect Examination by Mr. Gertz 138
Recross Examination by Mr. Martineau 138

Dr. Donald H. Riddle—
Direct Examination by Mr. Gertz 139
(recalled)
Direct Examination by Mr. Gertz, (cont.) 145
Cross Examination by Mr. Martineau 147
(recalled)
Cross Examination by Mr. Martineau (cont.) 153, 156

Otto Eisenschiml—
Direct Examination by Mr. Gertz 149
(recalled)
Direct Examination by Mr. Gertz, (cont.) 179
Cross Examination by Mr. Martineau 193, 222

PAGE

For Defendant:

Thomas J. Naughton—
Direct Examination by Mr. Martineau 142
Cross Examination by Mr. Gertz 143
Redirect Examination by Mr. Martineau 144

Ernest Samuels—
Direct Examination by Mr. Martineau 228
Cross Examination by Mr. Gertz 239
Redirect Examination by Mr. Martineau 289

EXHIBITS.

Plaintiff's:

No. 6—Request for admissions 292
No. 8—Interrogatories addressed to Defendant .. 293
No. 9—Additional request for admissions 295
No. 10—Additional request for admissions 297
No. 17id—Letter dated October 2, 1953 on letterhead of Department of State, addressed to Otto Eisenschiml from R. B. Shipley, Director, Passport Office 300
No. 20—Over-all plagiarism of Millard's story 301
No. 21—Certificate of Copyright Registration 313
No. 22—Additional Certificate of Copyright Registration 314
No. 23—Assignment of Copyright 315
No. 24—Letter dated March 12, 1953 addressed to Ralph Daigh, from Elmer Gertz, Attorney for Otto Eisenschiml 316
Nos. 27-27A—Article from the Whig Press, Middletown, N. Y., Wednesday, April 19, 1865 318
No. 29—Reproduction of Letter dated July 20, 1865, addressed to Maj. Jas. R. Obourne, Provost Marshall from Michael Henry, Bartender 320
No. 30—Comparisons of language in the Gleason story, Millard and Eisenschiml 321
No. 31—Comparisons of language in the Gobright story, Millard and Eisenschiml 322

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

OTTO EISENSCHIML,
Plaintiff,
vs.
FAWCETT PUBLICATIONS, INC.,
a Delaware Corporation,
Defendant.

Civil Calendar
53 C 1912

No. 11830

DOCKET ENTRIES
JUDGE SULLIVAN

Basis of action: Copyright — Not less than $150,000.00 & Injunc.

Attorneys

For Plaintiff-Appellant: Elmer Gertz and Irwin S. Baskes, 120 S. La Salle St., Chicago 1. RA 6-6116.

For Defendant: A. L. Hodson, Howard Ellis, J. B. Martineau, Don H. Reuben of Kirkland, Fleming, Green, Martin and Ellis, Prudential Plaza, 130 E. Randolph, Chicago 1.

Joseph A. Graber, Master, 7012 South Shore Drive.

Date, 9/16/53; Plaintiff's account, EG Dep Sept. report; received 15.00.

Date, Oct. 20, 1953; disbursed 15.00.

Date, 5/22/56; Plaintiff's account, EG, Appeal; received 5.00

Date, 5/24/56; Plaintiff's account, Treas CD 3 13; disbursed 5.00.

Date	Filings—Proceedings	
9/16/53	Filed complt. & copy — 4 pp. (JS5)	15.00
9/16/53	Iss. summons & copy — copy of complt. att. rw.	
10/ 2/53	Filed appearance of deft and attys (1) d	
10/ 5/53	Filed summons retd served 2.40 H	

11/ 9/53 Filed Notice and Answer. (4)
11/ 9/53 Filed Stipulation. (1) H
12/14/53 Leave to pltf. to file inst. motion for summary judgment and supporting affidavits, etc. Deft. to file counter-affidavits by Jan. 4, 1954, and said motion taken under rule 7—Draft—Barnes, J. (1) Mld. notices 12/15/53.
12/14/53 Filed Notice, Motion for Summary Judgment and Affidavit of pltf. in support of his motion for summary judgment. (13) P
1/12/54 Filed Plaintiff's Brief In Support Of His Motion For Summary Judgment. (5) d
1/21/54 Filed Notice and Brief in answer to pltf's brief. (2) H
1/28/54 Filed Notice and Affidavit of Joseph Millard. (1) (2) d
1/27/54 Filed Notice and Pltf's reply brief in support of his motion for summary judgment. (6) P
2/11/54 Pre trial conf held and motion of pltff for a summary judgmt is denied. By agreement order cause referred to Special Master James O'Shaughnessy of 10 S. LaSalle St., Chgo., Ill. Sullivan, J.
2/11/54 Mailed C.C. of order of 2/11/54 to Master. Mld ntcs 2/12/54. d
2/15/54 Filed Notice. (2)
2/15/54 On motion of deft. enter order vacating order referring this cause to Master James B. O'Shaughnessy — Sullivan, J. Mld. notices 2/15/54. P
2/25/54 Filed Notice and Deft's. response to pltf's. request for admissions. (8) P
3/ 1/54 Filed Notice and Deft's Answers to Interrogatories. (1) (4) d
3/ 8/54 Filed Notice and Deft's Response to Pltff's Request for Admissions. (1) (2) d

9/20/54 Filed Notice.
9/20/54 Filed Petition.
9/20/54 Order cause referred to Master in Chancery Joseph A. Graber. — Sullivan, J.
Mld ntcs 9/21/54. H
9/21/54 Mld c.c. of order to Master. tb
10/ 5/54 Filed Notice and deft's response to pltf's request for addtl admsns. (5) h
10/28/54 Filed Deposition of Joseph Millard & Ralph F. Daigh. d
11/22/54 Filed Stipulation and Interrogatories propounded by pltf and cross-interrogs. (8)
12/ 3/54 Filed deposition of Mrs. Joseph J. Millard. H
3/ 3/55 Filed Oath of Master Joseph A. Graber. t
12/28/55 Fld Special Master's Report. (30,2)
Mld notices to attys of record with copy of report. t
1/ 4/56 Filed Notice and Exceptions of Plaintiff to Special Masters Report. (2) (11) a
1/ 4/56 Filed Plaintiffs Suggested Findings of Fact. (106) a
1/ 4/56 Filed All of the Exhibits Listed in Paragraph 5 of Objections to Special Masters Report. a
1/ 9/56 Fld Pltffs brief in support of his exceptions to special master's report. jk
12/28/55 Filed Pltf's exhibits (large brown envelope).
12/28/55 Filed transcript of proceedings had before Special Master (5 vols, 2550 Pgs) (filed in Exhibit Drawer 31).
1/20/56 Filed Special Masters' Final Report.
Mld. Attorneys record notice and copy of report 1/29/56. a
1/24/56 Filed Notice of Filing Objections to the Special Master's Final Report. (2) a
1/24/56 Filed Exceptions of Plaintiff to Special Master's Final Report. (3) a

1/27/56 Filed Notice. (1)

1/27/56 Filed Notice & Ptff's additional brief in support of Exceptions to Spec. Master's "Final Report". wek

1/27/56 Plaintiff given 5 days from this date to file his brief in support of his motion objecting to Masters Report. Defendant given 30 days thereafter to file th ir brief in support of Master's report and Plaintiff given 15 days thereafter to file his Reply Brief and cause taken under advisement.—Sullivan J
Mailed notices 1/27/56. I

3/ 2/56 Fld brief in opposition to pltff's objections to Master's Report & in support of Master's Report & 3 copies. (21) t

4/26/56 Fld memorandum. (6) t

4/26/56 Master's Reports are confirmed in full and a re-reference will be made to the Master to determine the amount of attorneys fees. Filed memorandum opinion, Deft. to submit draft order on April 30, 1956 at 10 A.M. Sullivan—J.
Ntcs. mld. 4/26/56.

4/30/56 Enter order pur. to Court's ruling of 4/26/56. Draft Sullivan—J. (5)
Mld. ntcs. 5/1/56. t

5/ 2/56 Mld. C.C. of Order to Master Jos. A. Graber t

5/22/56 Filed Notice of Appeal of plaintiff.
(1) $5.00 pd.

5/22/56 Filed Cost bond on appeal. (1)

5/22/56 Mailed copy of notice of appeal to a'tys. for defendant and Master Graber. B

5/29/56 Filed Appellant's Statement of points (4)

5/29/56 Filed Appellant's Designation of contents of record on appeal. (4) B

6/ 4/56 Filed Notice of Motion. (2)
6/ 4/56 Filed Plaintiff's motion to stay proceedings. (2)
6/ 4/56 Proceedings stayed upon filing of supersedeas bond by the plaintiff.—Sullivan, J.
Mailed notice to Attys. 6/6/56.
6/ 5/56 Filed Notice, and Appellee's designation of additional portions of record of appeal. (4)
6/ 5/56 Supersedeas Bond in the sum of $7000.00 approved and filed.—Sullivan, J.
Mailed notice to Attys. 6/6/56.
6/ 5/56 Filed Supersedeas Bond. (2) B
5/17/56 Filed Change of Address. a
6/20/56 Clerk's File copy of Transcript of proceedings had on Feb. 11, Feb. 15, and Sept. 20, 1954, before the Honorable Philip L. Sullivan, District Judge. Filed by official court reporter. (14, 3 & 4) B
6/27/56 Filed Stipulation (1)
6/27/56 By stipulation time for filing the record on appeal and the docketing of this cause in U. S. Court of Appeals is extended to July 31, 1956.—Draft—Sullivan. J.
Mailed Notice to Attys. 6/27/56. B
6/28/56 Enter Order to suggest death of counsel for deft. J. B. Martineau and move for leave for A. L. Hodson to file his appearance as atty. for deft.—Sullivan, J.
Mailed notices. 7/2/56 I
6/28/56 Filed Notice of Motion. (2)
6/28/56 Filed Petition. (3)
6/28/56 Ordered that lv be and same is given to Joseph A. Graber, Spl Master to file partial satisfaction in the sum of $1500.00 for satisfaction in the sum of $1500.00 for payment received on account of his fees from pltff herein as ordered

by order of this Court entered 4/30/56. Sullivan, J. Draft (1) I
Mailed notices 7/2/56.

6/28/56 Filed Partial Satisfaction. (2) I

7/2/56 Filed appearance of addtl atty for deft. H

7/9/56 Filed Stipulation. (1)

7/9/56 On stipulation enter order that Clerk of the District Court prepare record on appeal under new Court of Appeals Rules — Draft —Hoffman, J. (1)
Mailed notice to attys. 7/9/56. B

7/19/56 Clerk's File Copy of Transcript of proceedings had before the Honorable Philip L. Sullivan, Judge, on June 28, 1956 filed by official court reporter. (6) B

1 STATEMENT UNDER RULE 10(b)
UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

1. This suit was commenced on September 16, 1953.

2. The plaintiff in said action was Otto Eisenschiml, and the defendant was Fawcett Publications, Inc., a Delaware corporation. No change in the original parties has taken place.

3. The pleadings in the said action were filed on the following dates:

(a) Complaint filed on September 16, 1953.

(b) Answer to complaint filed on November 9, 1953.

(c) Plaintiff's motion and affidavit for summary judgment filed December 14, 1953.

(d) Defendant's affidavit (by Joseph Millard) in opposition to plaintiff's motion and affidavit for summary judgment filed January 28, 1954.

(e) Plaintiff's request for admissions served on

defendant February 17, 1954, February 26, 1954 and
2 September 7, 1954, respectively.

(f) Defendant's response to plaintiff's request for admissions filed on February 25, 1954, March 8, 1954 and October 5, 1954, respectively.

(g) Plaintiff's interrogatories served on defendant on February 18, 1954.

(h) Defendant's answers to plaintiff's interrogatories filed on March 1, 1954.

(i) Depositions of Joseph Millard and Ralph Daigh, filed October 28, 1954.

(j) Deposition of Mrs. Joseph Millard, filed December 3, 1954.

4. There were no arrests, bail taken, or property attached.

5. (a) The cause was referred to Honorable Joseph A. Graber as Special Master, and a trial had before him on November 17, 1954 and on subsequent dates as set forth in the transcript of proceedings.

(b) The issue of damages and profits was reserved by stipulation of the parties recited into the transcript of proceedings.

(c) The Special Master filed his report on December 28, 1955, finding the issues in favor of the defendant and against the plaintiff, and recommending that the court enter judgment for the defendant
3 and tax all costs of the proceedings including attorneys fees against the plaintiff.

(d) The plaintiff filed his exceptions to the Special Master's report on January 4, 1956.

(e) Special Master filed his final report on January 20, 1956 overruling plaintiff's objections (with minor exceptions) and confirming his original report.

(f) Plaintiff filed his exception to the Special Master's final report on January 24, 1956.

6. (a) Special Master's reports were confirmed in full by Honorable Philip L. Sullivan in memorandum of decision filed April 26, 1956 and Clerk's memorandum of order entered April 26, 1956.

(b) Special Master's reports were confirmed in full by the Honorable Philip L. Sullivan by judgment order entered April 30, 1956.

7. Notice of appeal of plaintiff and appeal bond, both filed on May 22, 1956.

Dated: May 24, 1956.

Respectfully submitted,
Elmer Gertz and
Irwin S. Baskes
By Elmer Gertz

4 * * *

5 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of April (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Six and of the Independence of the United States of America, the 180th Year.

Present:

Honorable John P. Barnes, Chief District Judge
Honorable William H. Holly, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Win G. Knoch, District Judge
Honorable Julius J. Hoffman, District Judge

Roy H. Johnson, Clerk

William W. Kipp, Sr., Marshal

Monday, April 30, 1956

Court met pursuant to adjournment

Present: Honorable Philip L. Sullivan, Trial Judge

6 COMPLAINT
(Filed Sept. 16, 1953)

The Plaintiff Alleges:

Plaintiff is a citizen of the State of Illinois and defendant is a corporation incorporated under the laws of the State of Delaware. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00. The action arises under the Copyright Law of the United States, Title 17 of the United States Code, as codified and enacted unto law by the Act of July 30, 1947 (61 Stat. 652) and amended by the Act of April 27, 1948 (62 Stat. 202), the Act of June 25, 1948 (62 Stat. 869), the Act of June 3, 1949 (63 Stat. 1953), the Act of October 31, 1951 (65 Stat. 710) and the Act of July 17, 1952 (66 Stat. 752), and any other amendments thereto, and the Act of March 4, 1909, as amended.

COUNT I.

1. Prior to March 26, 1937, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled "Why Was Lincoln Murdered?".

2. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

3. Between March 26, 1937, and March 27, 1937, plaintiff complied in all respects with the Act of March 4,
7 1909, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 27, 1937, Class A, No. 104467."

4. Since March 26, 1937, the book has been published by plaintiff and all copies of it made by plaintiff or under

his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of March 4, 1909, as amended, and all other laws governing copyright.

8 5. Since March 26, 1937, plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book.

6. After March 27, 1937, defendant infringed the copyright by publishing and placing upon the market a book entitled "America's Greatest Unsolved Murder", which was the principal feature of the February 1953 issue of "True", a magazine published by defendant and which was copied largely from plaintiff's copyrighted book, entitled "Why Was Lincoln Murdered?".

7. A copy of plaintiff's copyrighted book and a copy of defendant's infringing book and magazine will be produced at the trial of this cause and at such other time or times as shall be required by this court. Plaintiff has heretofore given defendant a copy of plaintiff's book.

8. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

Wherefore plaintiff demands that:

I. Defendant, its agents, and servants be enjoined during the pendency of this action and permanently from infringing the copyright of the plaintiff in any manner.

II. Defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of the copyright and to account and pay over to plaintiff all the gains, profits, and advantages derived by defendant from its infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than $150,000.00.

III. Defendant be required to deliver up to be impounded during the pendency of this action all copies in its possession or under its control infringing the copyright and to deliver up for destruction all infringing the copyright and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

9 IV. Defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

V. Plaintiff have such other and further relief as is just.

COUNT II.

1. Prior to September , 1940, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled "In the Shadow of Lincoln's Death".

2. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

3. Between September , 1940, and October 2, 1942, plaintiff complied in all respects with the Act of March 4, 1909, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of recording of assignment of copyright, from the original holder of the copyright, Wilfred Funk, Inc., dated and identified as follows: October 2, 1942, Class A, Book 492, page 112.

5. Since September 23, 1942, the book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity wtih the provisions of the Act of March 4, 1909, as amended, and all other laws governing copyright.

6. Since September 23, 1942, plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book.

7. After September 23, 1942, defendant infringed the copyright by publishing and placing upon the market a book entitled "America's Greatest Unsolved Murder", which was the principal feature of the February 1953 issue of "True", a magazine published by defendant, and which was copied largely from plaintiff's copyrighted book, entitled "In the Shadow of Lincoln's Death".

8. A copy of plaintiff's copyrighted book and a copy of defendant's infringing book and magazine will be produced at the trial of this cause and at such other time or times as shall be required by this court. Plaintiff has heretofore given defendant a copy of plaintiff's book.

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

Wherefore plaintiff demands that:

I. Defendant, its agents, and servants be enjoined during the pendency of this action and permanently from infringing the copyright of the plaintiff in any manner.

II. Defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of the copyright and to account and pay over to plaintiff all the gains, profits, and advantages derived by defendant from its infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than $150,000.00.

III. Defendant be required to deliver up to be impounded during the pendency of this action all copies in its possession or under its control infringing the copyright and to deliver up for destruction all infringing the copyright and to deliver up for destruction all infringing

copies and all plates, molds, and other matter for making such infringing copies.

IV. Defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

V. Plaintiff have such other and further relief as is just.

/s/ Elmer Gertz
Attorney for Plaintiff

11 * * *

12 ANSWER
(Filed Nov. 9, 1953)

The defendant, Fawcett Publications, Inc., a Delaware corporation, by its attorneys, Howard Ellis, J. B. Martineau and Don H. Reuben, for answer to the plaintiff's complaint says:

For answer to the unnumbered paragraph of the plaintiff's complaint the defendant admits that it is a corporation incorporated under the laws of the State of Delaware, admits that this action arises under the copyright law of the United States, denies the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000, and does not have sufficient information nor belief to answer the allegation that the plaintiff is a citizen of the State of Illinois.

COUNT I

1. The defendant denies that the book entitled "Why Was Lincoln Murdered?" is an original work and has neither sufficient information nor belief to answer the remaining allegations of Paragraph 1 and demands strict proof thereof.

2. The defendant denies the allegations of Paragraph 2.

3. The defendant has neither sufficient information nor

belief to answer the allegations of Paragraph 3 of the complaint and demands strict proof thereof.

12A 4 and 5. The defendant has neither sufficient information nor belief to answer the allegations of Paragraphs 4 and 5 and demands strict proof thereof.

6. The defendant admits publishing an article entitled "America's Greatest Unsolved Murder" in its February 1953 issue of "True" magazine and denies all other allegations of Paragraph 6 of the complaint.

7. The defendant admits having received a copy of the book "Why Was Lincoln Murdered?" from the plaintiff.

8. The defendant admits receiving notification from the plaintiff that it has infringed an alleged copyright of plaintiff, but defendant denies any infringement whatsoever of any valid copyright the plaintiff might have.

COUNT II

1. The defendant denies that the book entitled "In The Shadow of Lincoln's Death" is an original work and has neither sufficient information nor belief to answer the remaining allegations of Paragraph 1 of Count II and demands strict proof thereof.

2. The defendant denies the allegations of Paragraph 2 of Count II.

3. The defendant has neither sufficient information nor belief to answer the allegations of Paragraph 3 of Count II of the complaint and demands strict proof thereof.

5. and 6. The defendant has neither sufficient information nor belief to answer the allegations of Paragraphs 5 and 6 of Count II and demands strict proof thereof.

7. The defendant admits publishing in its February 1953 issue of "True" magazine an article entitled "America's Greatest Unsolved Murder" and denies all other

allegations of Paragraph 7 of Count II of the complaint.

13 8. The defendant admits having received a copy of the book "In The Shadow of Lincoln's Death" from the plaintiff.

9. The defendant admits receiving notification from the plaintiff that it has infringed an alleged copyright of plaintiff, but defendant denies any infringment whatsoever of any valid copyright the plaintiff might have.

Wherefore, the defendant demands judgment dismissing the complaint herein together with costs and disbursements of this action.

14-15 * * *

16

PLAINTIFF'S EXHIBIT 7
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
(Filed Dec. 14, 1953)

Now comes Otto Eisenschiml, plaintiff herein, by Elmer Gertz, his attorney, and moves for summary judgment herein in his favor and against the defendant; and in support of such motion files herewith his affidavit, the exhibits thereto attached and the pleadings herein, and offers to produce the matters and things referred to in his affidavit, his two said copyrighted books referred to in his complaint, the certificates of copyright in connection therewith, and the infringing book or book-length article published by defendant and referred to in the complaint.

Alternatively, he prays for an interlocutory judgment on the merits, with the issue of the actual amount of his recovery reserved for further hearing.

Otto Eisenschiml, Plaintiff
Elmer Gertz, Attorney for Plaintiff

17

AFFIDAVIT OF PLAINTIFF IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

(Note: As hereinafter indicated in Appendix p. 180 in the testimony of plaintiff, he made certain corrections in this affidavit. The affidavit is here printed in the original form as filed.)

Otto Eisenschiml, plaintiff herein, being first duly sworn, on oath deposes and says that he has personal knowledge of the facts hereinafter set forth and that if sworn as a witness he could testify competently thereto. He further says that:

1. From birth he has been continuously, and now is, a citizen of the United States; and was, at the time of the filing of the complaint herein, a citizen of the State of Illinois. At each of the times mentioned in Counts I and II of the complaint he was a citizen of the United States.

2. Prior to March 26, 1937, he created and wrote an original book, entitled "Why Was Lincoln Murdered?" This book contains a large amount of material wholly original with him and is copyrightable subject matter under the laws of the United States.

3. Between March 26, 1937 and March 27, 1937, he complied in all respects with the Act of March 4, 1909, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 27, 1937, Class A, No. 104467."

18 4. Since March 26, 1937, the book has been published by him and all copies of it made by him or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of March 4, 1909, as amended, and all other laws governing copyright.

5. Since March 26, 1937, he has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book.

6. Prior to September, 1940, he created and wrote an original book, entitled "In The Shadow of Lincoln's Death." This book contains a large amount of material wholly original with him and is copyrightable subject matter under the laws of the United States.

7. Between September, 1940 and October 2, 1942, he complied in all respects with the Act of March 4, 1909, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of recording of assignment of copyright from the original holder of the copyright, dated and identified as follows: October 2, 1942, Class A, Book 492, page 112.

8. Since September 23, 1942, the book has been published by him and all copies of it made by him or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of March 4, 1909, as amended, and all other laws governing copyright.

9. Since September 23, 1942, he has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book.

10. The work affiant did on "Why Was Lincoln Murdered?" involved about 18 years and the expenditure of about $20,000.00, in addition to his own time. Some of the manuscripts, books, magazines and newspapers affiant had to acquire were very expensive and rare and their acquisition required extensive correspondence and research. For several years he paid wages to in-
19 vestigators in Washington, San Francisco, Macon, Ga., Burlington, Vermont, Chicago, and other places.

A special secretary worked for him for about three years, and two full-time assistants aided her for about one year prior to publication. Trips to various parts of the country cost additional money. The secretary and her mother, for example, were with him in Washington for some time, searching through the files of the Provost Marshal's office, and taking notes. The cash expenses for "In The Shadow of Lincoln's Death" amounted to about $3,000.00 in addition to his own time.

11. The defendant, Fawcett Publications, Inc., published in the July, 1947 issue of its magazine, "True", a book or book-length article, entitled "The Devil's Errand Boy", by J. J. Millard, the same person who is the author of a book, or book-length article, entitled "America's Greatest Unsolved Murder," about which complaint is made in the instant proceedings. At the time of the publication by defendant of both the July, 1947 and the February, 1953 books or articles by Millard, Ralph Daigh was Editorial Director of the defendant's said magazine, with general responsibility therefor. In the course and as part of the July, 1947 book or article, the following words appear, with respect to the assassination of Abraham Lincoln: "To recount only the known facts about the assassination would fill volumes—and leave most of the important questions forever unanswered. Mr. Otto Eisenschiml of Chicago, the outstanding authority on Abraham Lincoln's death, has devoted a lifetime of intensive research on the subject. His two books—Why Was Lincoln Murdered? and The Shadow of Lincoln's Death—are packed with his own sensational discoveries . . ." The said article then sums up a number of the findings, conclusions and surmises from the said two Eisenschiml books. There are attached hereto, marked Exhibit "A", and made a part hereof by reference, photostatic copies of pages 73 to 77, both inclusive, of the said July 1947 article.

12. Many of the leading authorities on Abraham Lincoln, the Civil War and American history in general, such as Carl Sandburg, Dr. Paul M. Angle, Dr. James G. Randall, and others, are in agreement with the said statement, or admission, of defendant that this affiant is "the oustanding authority on Abraham Lincoln's death" and that his said two books "are packed with his own sensational discoveries." This affiant has heretofore delivered to counsel for defendant an article on the subject by Professor Paul H. Ruck, of Harvard University, himself a distinguished historian and winner of the Pultizer prize for his book, "The Road to Reunion," in which Professor Buck says, among other things:

> "Historians, prior to Mr. Eisenschiml, indicated their puzzlement, if not bewilderment . . . Mr. Eisenschiml had a chemist's curiosity . . . When the known evidence failed to yield the answers, he sought further with indefatigable energy and curiosity, the result of which was to bring forth new evidence, the existence and relevance of which his predecessors never suspected . . . He found enough . . . to dictate a complete rewriting of the conventional story. . . ."

13. This affiant offers to supply books, reviews, letters, statements, and affidavits by leading historians, setting forth similar expert opinions with respect to this affiant and his said two books. He cites as typical of informed opinion the words of Dr. Paul M. Angle, which appear on pages 122-124 of his book, "A Shelf of Lincoln Books" (published in 1946 by Rutgers University Press in association with the Abraham Lincoln Association). There is attached hereto, marked Exhibit "B" and made a part hereof by reference, a copy of the said expert opinion by Dr. Angle. Dr. Angle is Director of the Chicago Historical Society, formerly secretary of the

Illinois State Historical Library, and formerly secretary of the Abraham Lincoln Association and author of several leading works on Lincoln.

14. After March 27, 1953, defendant infringed affiant's copyright by publishing and placing upon the market a book entitled "America's Greatest Unsolved Murder", which was the principal feature of the Febru-
21 ary 1953 issue of "True," a magazine published by defendant, and which was copied largely from affiant's copyrighted book, entitled "Why Was Lincoln Murdered?"

15. After September 23, 1942, defendant infringed affiant's copyright by publishing and placing upon the market a book entitled "America's Greatest Unsolved Murder." which was the principal feature of the February 1953 issue of "True", a magazine published by defendant, and which was copied largely from affiant's copyrighted book, entitled, "In The Shadow of Lincoln's Death."

16. Copies of plaintiff's copyrighted books and a copy of defendant's infringing book and magazine will be produced at such time or times as shall be required by this court. Affiant has heretofore given defendant copies of his said two books.

17. Affiant has notified defendant that defendant has infringed the copyrights of plaintiff, and defendant has continued to infringe the copyrights.

18. Affiant has prepared a compilation hereto attached, marked Exhibit "C", and made a part hereof by reference, which sets forth in the first column, under the words "True Magazine", passages from the infringing book or book-length article published by defendants in the February 1953 issue of its magazine "True", and which sets forth in its second column, under the words "Otto Eisenschiml", passages from the plaintiff's said

two copyrighted books, copied, plagiarized, infringed and pirated by defendant.

19. The following is a summary of the new factual material presented for the first time in plaintiff's two said copyrighted books, all of which was copied, plagiarized, infringed and pirated by defendant:

(a) That there was a mystery about Lincoln's death;
(b) That Parker was a key figure (His background, which I disclosed, had never before been laid bare.);
22 (c) That Mrs. Lincoln was responsible for Parker's appointment, and therefore could be, by a stretch of the imagination, said to have been under suspicion;
(d) That reports of Lincoln's death had been published in various papers prior to the tragedy, giving examples;
(e) The advertisements in the Washington newspapers, from which Millard drew his description, never had been reprinted before, so far as known;
(f) The significance of the note which was handed to Grant at the White House on April 14, 1865;
(g) The curious fact of Grant's evasiveness in his Memoirs;
(h) Proof that Grant's excuse for leaving Washington was unfounded;
(i) Time-table showing that Grant gained practically nothing by taking an early evening train;
(j) The significance of Stanton's refusal to have Eckert act as Lincoln's bodyguard;
(k) Stanton's false oath about Lincoln not being at the War Department on April 14, 1865;
(l) Stanton's and Eckert's false statements that they were busy at the War Department on the fatal night;

(m) The strange behavior of the editor Hanscom, and of the valet Forbes;

(n) The contradictory and evasive statements of Major Rathbone and Miss Harris;

(o) The two divergent statements of McGowan;

(p) The statement of the coachman Burns that he had taken Parker and Forbes for a drink;

(q) The exact time when Booth fired his shots;

(r) The fantastic clues left in Atzerodt's room;

(s) The contradictory stories of the livery man Fletcher, and the perversion of his testimony by the official recorder of the assassination trial;

(t) The willful changes made in the official record of the trial made by Pitman and Judge Advocate Burnett;

(u) The fact that the pursuit of Booth was not undertaken in the right direction, and that the War Department neglected to follow Booth's trail after Fletcher's report;

(v) The fact that the blotter of the 10th Street Police Station in Washington contained the names of witnesses and their statements;

23 (w) Captain Gleason's part in the story—that he knew where Booth had gone, but was refused cavalry, and was detained at headquarters;

(x) Stanton's delay in broadcasting Booth's name until too late to reach the morning editions;

(y) Proof that Stanton knew the identity of the assassin all along;

(z) When the Southern newspapers received the news of the tragedy;

(aa) The strange behavior of Gobright of the Associated Press;

(bb) The significance of the wire disturbance out of Washington during the crucial hours of the night, and Eckert's testimony in regard to it;

(cc) How the pursuit of Booth was organized;

(dd) The premature arrest of Arnold and O'Laughlin;

(ee) The entire O'Beirne story, based on his private papers and his diary, inaccessible to anyone but myself;

(ff) The discovery that O'Beirne, who almost caught Booth, was recalled after telling what he knew to Grant's chief telegrapher;

(gg) That the "tobacco barn" at Garrett's farm had more than one door;

(hh) Lafayette C. Baker's determination to catch Booth, or substitute another body for it;

(ii) Lafayette Baker's interference with the Dry Tortugas authorities to insure isolation and silence of the imprisoned "conspirators."

20. The following is a summary of the deductions, conclusions and speculations presented for the first time in plaintiff's two said copyrighted books, all of which were copied, plagiarized, infringed and pirated by defendant:

(a) That the conventional story of Lincoln's assassination is inaccurate, and that efforts were made to becloud it;

(b) That the conspiracy was much more wide-spread than generally accepted, and that it reached into high Washington quarters;

(c) That the Radicals and Stanton stood to gain much by Lincoln's death, and why;

(d) That Booth was being protected by some high personage, and why his road of escape was known and kept open;

(e) Why those who wanted to pursue Booth and knew where he had gone were prevented from following him, and why the organized pursuit was intentionally misdirected;

24 (f) Why the wires out of Washington went out of commission during the night of April 14, 1865;

(g) Why the news of the assassination was not allowed to reach Richmond and other Southern cities until it could be assumed that Booth had passed beyond them;

(h) Why the correspondent of the Associated Press suppressed a telegram which had preceded the interrupted wire service;

(i) Why the record of the conspiracy trial was deliberately doctored up;

(j) Why the government was interested only in punishing those conspirators who were suspected of having been in Booth's confidence, while all others were ignored;

(k) Why Grant did not tell the truth when he gave his reason for leaving Washington on April 14, 1865;

(l) The significance of Parker staying on the police force until Stanton was removed from office, and why their dismissals occurred almost simultaneously;

(m) The implication in the premature arrest of Arnold and O'Laughlin, indicating that the identity of the conspirators was known, and that those who might have been in Booth's confidence had to be silenced quickly;

(n) The significance of Stanton's refusal to let Eckert act as Lincoln's bodyguard that night;

(o) The interpretation of Booth's exclamation to Lloyd that they had murdered Lincoln and Seward, indicating that no other murders had been contemplated.

21. In the relatively few instances in the said infringing book or book-length article when defendant did not

copy, plagiarize, infringe and pirate from affiant's two said copyrighted books, it made historical errors, as evidenced by the following examples:

(a) Millard states (page 110, column 1, paragraph 3,) that "we don't know where he (Booth) got the wood," meaning the wood with which the door to the Presidential box was braced. "We" know very well where he got it, but affiant deemed it too trivial an item to record. Booth took it from a music stand in the orchestra.

(b) Millard tries to make a mystery of Sergeant Dye's testimony, (page 109, column II, and page 110). This so-called mystery was completely cleared up in the Surratt trial, with which he evidently is not well acquainted. (See Shadow, page 286, top.)

(c) On page 110, column I, Millard states that "at door 7 Booth could peek through the gimlet hole and see the occupants of the box in their places." He could do nothing of the sort. All he could see was the back of Lincoln's chair, and perhaps part of the President's head. Obviously Millard has a poor conception of the location and size of the hole.

(d) On page 110, column II Millard says, "for everyone who identified Booth, there was another equally positive that it could not possibly have been Booth." So far as affiant has been able to find, no one ever denied that it was Booth. Some were certain that it had been Booth, some were uncertain. No one said it could not possibly have been he.

(e) On page 113, column I, paragraph 5, Millard wonders why Paine needed a guide, since he knew the way to Seward's house. Millard overlooks that Paine did not know the way to Surrattsville, (where he was supposed to meet Booth) especially at night. Herold did, hence he was to act as guide.

(f) On the same page paragraph 8, Millard manufac-

tures a new mystery for the reader. "A second rider," he says, "supposed to have been Herold . . ." He repeats it, column II, paragraph 2, by stating "if it was Herold." Of course it was Herold, as appeared from the sequence of events. There was no mystery about it at all.

(g) On Page 118, column II, bottom, Millard again creates a mystery, then solves it. "Booth," he says, "was trying to discover whether [the soldiers surrounding the Garrett shed] were a picked guard, sent *to help him escape.*" Would 25 private soldiers be entrusted with such a top-secret? And how could they have helped him? By escorting him in uniform through the South, or to Mexico, where he reportedly intended to go?

26 (i) On page 106, column I, paragraph 6, Millard mentions Stanton's "little bells". These bells were Seward's boast not Stanton's, as is well known to everyone acquainted with the history of the Civil War era.

(j) The "gin-soaked prostitute" (page 34, last line) was, of course, never under suspicion in connection with the plot, as Millard indicates.

22. Following the publication of the infringing book or book-length article in defendant's magazine "True" in February 1953, a number of persons, including students of Abraham Lincoln, the Civil War and American history, called affiant's attention to the said publication, remarking upon the close similarities between it and this affiant's said two books, and asking him if the said publication was written by him under a pseudonym. Affiant is informed and believes because he was told so by several such persons that similar letters were received by the defendant.

23. At that time this affiant was seeking to find a publisher for a new edition of "Why Was Lincoln Murdered?" and was assured by his agent, prior to said infringing publication, that it was likely that such pub-

lisher would be found. Thereafter he was advised by the agent that the said infringing publication made it unlikely that such publisher would be found and that if found the sale of copies would be impaired. Affiant offers to furnish an affidavit from his said agent, setting forth the relevant facts in that connection.

24. One Charles E. Mason, a former State's Attorney of Lake County, Illinois, a lawyer, and a student of history, wrote to defendant, under date of February 19, 1953, calling its attention to what appeared to him to be infringements of the copyrights of the plaintiff on the said two books. Under date of February 27, 1953, the defendant replied to the said Charles E. Mason as follows:

27

FAWCETT PUBLICATIONS INCORPORATED
67 W. 44th St., New York 18, N. Y.

February 27, 1953

Mr. Charles E. Mason
224 Washington Street
Waukegan, Illinois

Dear Mr. Mason:

Your letter of February 19th addressed to Roger Fawcett has reached my desk.

You are probably right that Doctor Eisenschiml should have been credited in the piece that Mr. Joseph Millard did on Lincoln's death.

Mr. Millard did considerable research in the Eisenschiml library and in private files for his research on this piece. He also met Doctor Eisenschiml in Chicago and found him the most helpful and generous of men.

The original manuscript from which True made selections for publication did credit Doctor Eisenschiml. However, when it was cut by the editors the credit was removed as is quite often the case in magazine work.

It is possible that the entire original manuscript will be published by a book publisher and if that is true, I am sure the credit to the Doctor will be retained.

Cordially yours,
Ralph Daigh
Vice President
Editorial Director

RD:gk

28 25. The February 1953 issue of the defendant's publication "True", containing the infringing book or book-length article, was sold to the public at 25¢ per copy. This affiant is informed and believes and therefore states that 1,898,285 copies of the said February 1953 issue were sold, bringing in a total of $474,571.00 from sales, and that in addition there was an advertising revenue for the said issue of $193,772, making a total income $668,343.00.

26. The infringing book or book-length article took up 25% of the contents of the February 1953 issue of "True" and was the main feature of the said issue.

27. Except for the material and language taken from this affiant's said two books, the said infringing book or book-length article published by defendant could not have been written, in the judgment of this affiant and other experts. The said copied or pirated material and language are the heart and gist of the said book or book-length article.

Otto Eisenschiml, Plaintiff

Elmer Gertz
Attorney for Plaintiff

Subscribed and sworn to before me this
3rd day of December, 1953.
Gertrude E. Wadenpohl,
Notary Public
My Commission Expires April 19, 1955.
(Seal)

29 EXHIBIT "A".

• • •

30 • • • The school-book account of the murder is familiar to everyone. We are solemnly taught that John Wilkes Booth, a mad actor, shot Lincoln to avenge the South; that Booth was trapped after a mighty manhunt and shot resisting arrest; and that his fellow-conspirators were fairly tried and justly executed for their parts in the terrible plot.

• • •

To recount only the known facts about the assassina-
31 tion would fill volumes—and leave most of the important questions forever unanswered. Mr. Otto Eisenschiml of Chicago, the outstanding authority on Abraham Lincoln's death, has devoted a lifetime of intensive research to the subject. His two books—Why Was Lincoln Murdered? and The Shadow of Lincoln's Death—are packed with his own sensational discoveries. Yet he feels that the surface has barely been scratched.

Before going into Baker's questionable and darkly mysterious part in the affair, it is necessary to review briefly the events leading up to the murder and what had taken place prior to Baker's entry into the case.

To begin with, there is considerable evidence that the plot originated, not in the diseased brain of an insane actor who felt the South had been wronged by a tyrant, but in the diabolically cold minds of Washington politicians. If John Wilkes Booth fired the pistol (and there is even some doubt about that) he may have been no more than the hired tool of some of Lincoln's own political associates.

There is no secret about the political situation at the time. The war had just ended with the Great Rebellion smashed. The South lay prostrate, in physical and economic ruins. The Radical Republicans fought openly to keep her that way. They wanted to guarantee that never would Southern agriculture or commerce compete with the North. More important, they wanted to make sure that never again would

there be a group of Southern representatives in Congress strong enough to block the money-grabbing bills introduced by eastern capitalists.

Lincoln was opposed to all this. He wanted the war forgotten and the South restored to economic and social equality. As quickly as possible he wanted Southern congressmen back in Washington. To make it worse, the voters of the nation had just granted him another four years in which to carry out his program of reconstruction.

Lincoln could not be stopped politically. There was only one other way.

• • •

Queerly, no one seems to have instantly recognized John Wilkes Booth as the man who leaped from the President's box to the stage of Ford's Theatre, shouted, "Sic semper tyrannis!" and vanished out the stage door. This happened about 10:15 on the evening of the fourteenth of April.

Stanton, who had long held full control of the telegraph lines, did not release the first announcement of the shooting to the newspapers until ten minutes past two the following morning, three hours after he left Lincoln's bedside. In this dispatch Booth's name was not mentioned. It was not until 3:20 in the morning, too late for the morning editions of the newspapers, that Stanton finally released the official dispatch giving Booth's name.

Even the hammiest village constable would have sense enough to know that a broadcast of a fleeing man's identity would be the surest way to nab him before he went into hiding. Such an unaccountable and inexcusable delay on the part of the Secretary of War is, to say the least, puzzling.

Explain, if anyone can, why when thousands of police, infantrymen, cavalrymen and detectives were poured out to set up an intensive blockade around Washington—a blockade that even held up trains in Baltimore and put boatloads of alert soldiers on every river and stream—one road was left totally unguarded. This was the road Baker himself had followed, down through Port Tobacco, on his first spy

jaunt into the Confederacy. It was the road still used by every smuggler, spy, deserter and dispatch bearer traveling by land between the Union and the Confederacy.

It was, also, the road actually taken by the assassin.

It is also hard to explain why young Lieutenant Dana, brother of Stanton's Assistant Secretary of War, acted as he did. Dana and a small troop of men stumbled onto the Port Tobacco road within four miles of the house where, at that moment, the fugitives were sleeping. Instead of blocking the trail, Dana immediately ordered his small force to scatter along the shore of a nearby river.

Meanwhile Dr. Samuel A. Mudd, suspicious of two men, one with a broken leg, who had come to him for treatment in the night, had sent his cousin, George Mudd, to notify the authorities. Mudd found Lieutenant Dana and told his story. Dana not only disregarded it, but failed even to mention it to other searchers until Tuesday, four days after the murder. It was not until Friday, one week after the assassination, that anybody came around to search Dr. Mudd's house and find a boot there with Booth's name in it.

Similar instances of either criminal carelessness or deliberate disregard of obvious clues could be multiplied by the hundreds. The school-book story that Booth was trapped after an intensive manhunt is as far from the truth as one could possibly get. Booth's capture, when it came, was apparently neither planned nor even desired, but was an accident caused by his unforeseen broken leg.

Another crazy instance had occurred in Washington that fateful night. A stablehand by the name of John Fletcher had rented a horse to David E. Herold, Booth's companion on the flight. When the horse was not returned on time, Fletcher went hunting for it.

• • •

Later, when the news of the assassination came out, Fletcher told his story at police headquarters. Nobody in-

vestigated. Nobody asked the guard on the bridge who had passed, until the next day.

• • •

At that moment Augur was concealing the discovery that Booth had broken his leg. A few blocks down the street a Major Richards was hiding a star witness, Louis Weichmann, who had been intimate with the conspirators at Mrs. Surratt's boarding house. A dozen other groups and individuals were feverishly double-crossing one another to conceal evidence. The rewards for Booth's capture had become his strongest ally.

Just what put Baker on the right track may never be known. His own story is as obviously untrue as it is confusing.

• • •

32 • • • Later, in his book and in Congressional testimony, Lafayette Baker repeated a curious detail of that fateful Wednesday. With Conger, he rushed to carry the news to Stanton, "When I entered the room he was lying upon a sofa. . . . I rushed into the room and said, 'We have got Booth.' Secretary Stanton was distinguished during the whole war for his coolness, but I had never seen such an exhibition of it in my life as at that time. He put his hands over his eyes and lay for a moment without saying a word. Then he got up and put on his coat very coolly. In the meantime I had laid on his table all the effects that had been taken from Booth. He asked where he was *captured.* I said 'Near Port Conway, beyond the Rappahannock in Virginia. Here are the things found on Booth's *body.*'"

The italics above I have added for emphasis. Notice the peculiar sequence of that statement. Baker implied, and Stanton quite obviously believed, Booth had been taken alive. He indicated this belief by asking where he was *captured.*

Men receiving good news react in odd ways. But to cover

the eyes and lie dead still is a much more natural reaction for a man experiencing or expecting a frightful shock. And if Stanton, as many historians believe, was behind the assassination, the thought of Booth's being taken alive would certainly be a shock.

Baker's delay in mentioning Booth's *body* and his peculiar insistence on recounting the incident in just that strange order, has the suspicious sound of a hireling needling his boss. By itself, the incident could be ignored. But as one of a long sequence of puzzling occurrences, it seems significant.

• • •

A year or so later Lafayette Baker remarked to acquaintances, with a sly smile, "I intended to have Booth's body, dead or alive, or a mighty good substitute for it. . . ."

Well, he got a body. But whose?

33 Thanks to Stanton and Baker the mystery is still unsolved.

• • •

Meanwhile the government prepared to put Booth's fellow-conspirators on trial. These were Mrs. Mary Surratt, at whose boarding house the plot was supposed to have crystallized; Payne, who had attacked Secretary Seward; Herold, who fled with Booth; George Atzerodt, whose alleged part in the plot is open to doubt; unhappy Dr. Mudd, whose crime consisted of setting a stranger's broken leg; and three lesser figures. They were confined on a gunboat and from Stanton's office came the weirdest, cruelest, and perhaps most significant order of all.

"To prevent conversation" the prisoners were fitted with hoods—canvas bags covering their heads and tied at the neck, with only a small hole for breathing and eating. Even Mrs. Surratt, whose guilt was not even circumstantially proved, was subjected to the torture of heavy irons during at least part of her imprisonment. As further

guard against "conversation" each prisoner occupied a middle cell, with an empty cell at each side, and was allowed no communication with anyone.

What possible harm could there be in conversation by these doomed prisoners—unless that conversation might reveals some ugly truths about who really murdered Lincoln? The trial was a farce and a travesty of justice. The prisoners were gagged by the hoods, refused the right to speak in their own behalf, convicted by intent and rushed to the gallows with unseemly haste.

Dr. Mudd, of all the central figures, was the only one to escape hanging. His innocence was almost obvious from the first. But what if Booth, in a delirium of pain, had blurted any inconvenient facts while his leg was being set? The sinister forces directing the case could apparently take no chances. Mudd, along with Arnold, Spangler and O'Laughlin, three minor figures, was rushed from Albany penitentiary to the Dry Tortugas, off Florida.

By a special order, sent by Baker, the four hapless prisoners were confined in a special cell, under special guard, and were *forbidden to have intercouse with anyone else on the desolate island.* Dr. Mudd wrote his wife later that they were unable to move five steps without permission from the guard. Once again it seems clear that what the War Department wanted was not justice but silence.

But of the hundreds of sinister and bewildering evidences of dark plot behind the whole affair, the strangest occurred at the trial of the conspirators, and was not revealed for over seventy years. A few years ago, digging into War Department archives, Mr. Eisenschiml, the Lincoln authority, came upon a shocking find.

In the envelope of exhibits from the trial was the most important of all, the photograph shown to witnesses to establish Booth's identity. It is clearly marked Booth's Photograph, Exhibit I.

It was not a picture of John Wilkes Booth at all—but a photo of his brother, Edwin, to whom he bore only the faintest resemblance.

No intelligent comment is possible on such an incredible discovery. Its implications stagger the imagination.

34 EXHIBIT "B"

A SHELF OF LINCOLN BOOKS.
A Critical, Selective Bibliography
of Lincolniana, By Paul M. Angle.

New Brunswick, Rutgers University Press. In association with The Abraham Lincoln Association of Springfield, Illinois, 1946. Pages 122 to 124:

"Otto Eisenschiml.

Why Was Lincoln Murdered? 1937.

David Miller DeWitt studied the open record of the conspiracy trial and came up with a number of conclusions and questions that reflect seriously upon men who held high office in the government of the United States. Otto Eisenschiml went far beyond the open record—to the archives of the War Department, the records of the Capital police to locate all private papers which patient, sustained research could locate—and emerged with conclusions and questions and mysterious circumstances in comparison with which the contentions of DeWitt become few and almost orthodox. About all one is sure of after reading Eisenschiml is that on the 14th of April, 1865, John Wilkes Booth shot Abraham Lincoln; that twelve days later a man who may have been Booth was shot in the Garrett barn; and that in due though improper course seven men and one woman were convicted of complicity in the crime and either hanged or sent to prison.

To illustrate: Eisenschiml shows that Stanton knew the identity of Lincoln's assassin long before midnight on April 14, yet he did not make Booth's name public until 3:00 a.m. on the 15th. And in spite of the fact that Booth was almost certain to strike for Richmond, news of Lincoln's assassination was not published in that city until April 17, even though there was ready communication with Washington at all times.

To illustrate further: Soon after the assassination every road out of the capital was barred—except the road to Port Tobacco. Yet this was the road the assassin was most likely to take! Moreover, within a few hours of Lincoln's murder, the War Department knew that Booth and Herold had crossed the Anacostia Bridge and at least started on this road. Nevertheless, no troops were sent in pursuit, and when an enterprising officer asked for cavalry horses so that he might dispatch a detail over the Port Tobacco Road, his request was refused.

Eisenschiml has singled out many ominous circumstances in addition to those mentioned, and he has not hesitated to imply that they are not all the result of accident or ineptitude. The reader is bound to infer that the Radical Republicans, and Edwin M. Stanton especially, were responsible for Lincoln's death, although Eisenschiml carefully points out that no scrap of positive evidence supports this hypothesis. Every student would do well to keep that warning in mind.

One may or may not accept the author's implied solution of his mystery. His facts, however, remain—startling enough to be worth following for their own sake. They reveal, at the least, almost unbelievable inefficiency in the War Department, and

go far to explain why four years passed before the North was able to subdue a South greatly inferior in both men and resources."

35 EXHIBIT "C"

February, 1953 Issue of TRUE Magazine's America's Greatest Unsolved Murder by Joseph Millard—COMPARISON with original works of OTTO EISENSCHIML

TRUE MAGAZINE	OTTO EISENSCHIML
1.) Millard, page 36 . . . In the little village of St. Joseph, Minnesota, 40 miles from the nearest railroad or telegraph, men met on the street . . . and asked . . .	1.) In the Shadow of L's Death, page 26 . . . that murder . . . was circulated and talked of in the streets . . . of St. Joseph, Minnesota . . . there were no railroad nor any telegraph communication nearer than 40 or 80 miles . . .
2.) Millard, page 37 In midmorning . . . citizens of Manchester, New Hampshire, talked of his assassination as a thing accomplished . . . Booth had, not long before, visited a relative in Manchester.	2.) In the Shadow of L's Death, p. 25 On the morning . . . people in the New Hampshire town of Manchester openly spoke of Lincoln's assassination as an event of the past. . . . . . . Booth had been in Manchester a short time previously and had a relative . . . there.

3.)
Millard, page 37

At 2:30 on the afternoon of the 14th the Whig Press of Middletown, New York, published the news. The Newburgh Journal had the story, too, but held off publication. . . .

3.)
In the Shadow of L's Death, p. 26

On Friday, the 14th, at 2:30 p.m., . . . a writer in the Middletown Whig Press asserted . . . that the President was shot. . . .

. . . . The Newburgh Journal confirmed the facts . . . but was more conservative. . . .

4.)
Millard, page 105

In his memoirs, Grant skillfully slid over the incident with the excuse of much work to be done and an overwhelming anxiety to see his children.

4.)
Why Was L. Murdered? p. 56

In his memoirs, Grant passed over this episode quickly and skillfully . . . if able to finish his work early, his intention was to join his children. . . .

5.)
Millard, page 105

In those same memoirs he forgot himself to the extent of remarking that by the afternoon of the 13th his work was practically finished.

5.)
Why Was L. Murdered? p. 58

. . . as only one . . . unimportant telegram was sent out by him (Grant), it is obvious that his work was . . . practically finished (on the 13th) . . .

Grant himself admitted as much when he wrote . . . "by the 14th, . . . I was pretty well through with this work. . . ."

6.)
Millard, page 105

What of his very natural yearning to rejoin children so long separated from their father . . . ? But Grant had just returned from City Point, not too far from Burlington.

6.)
Why Was L. Murdered? p. 56

Can one really believe that Grant's longing for his children was so irresistible . . . ? . . . Burlington was only a comparatively short distance from City Point.

36 7.)
Millard, page 105

And that 6 o'clock train he took! It was a Camden & Amboy local, requiring two wearisome changes during the night. . . . He could have gone to the theater, taken an early-morning express and reached Burlington . . . at 2:58 in the afternoon.

7.)
Why Was L. Murdered? p. 56

. . . the evening train which the Grants took . . . at six P.M. . . . All that they stood to gain by suffering the discomforts of a night ride . . . and making two transfers at very inconvenient hours. . . . By traveling on the morning train they could have taken in the performance, and still have arrived at Burlington in the early afternoon. (Follows time table of the Camden and Amboy Railroad giving the departure time of the mail at 6:00 P.M., and the arrival of the express at 2:58 P.M.)

The incongruity of Grant leaving on that train never was pointed out before, and the underlying time table never had been mentioned in books. The difficulty of

finding this time table was considerable. Eisenschiml engaged a student to find it for him and it took him several months to do so.

8.)
Millard, page 105

. . . Twice the sensitive Julia Grant had been publicly humiliated by Mrs. Lincoln's outbursts of shrieking jealousy. The prospect of risking another crazy tantrum in a crowded theatre could have offered no pleasure to Grant's wife.

8.)
Why Was L. Murdered?
pps. 57-59

Mrs. Grant was a woman of education and refinement. . . .

. . . it is no wonder that Mrs. Grant did not enjoy the prospect of an evening in the same loge with the Lincolns . . . especially as she had again been rudely insulted. . . . (The first humiliation is described in detail on page 58.)

9.)
Millard, page 106

. . . Stanton . . . went home to a leisurely dinner. Afterward he went over for a chat with the invalid Seward and sat around with other guests for hours. Then the sound of a band reminded him that a procession was coming to serenade him. Stanton hurried home, made them a pretty speech and went up to bed. He was standing in his long drawers, almost ready to

9.)
Why Was L. Murdered? p. 37

. . . He (Stanton) went home and dined as usual. He then went to see Secretary of State Seward. . . . There he found six or eight people and stayed chatting with them till he heard the music of a procession which had notified him that it would call on him. Thereupon he went home, made the serenaders a little speech . . . and went to his

retire, when a servant burst in with the news of Lincoln's assassination.

10.)
Millard, page 106

And afterward Stanton swore under oath . . . that Abraham Lincoln had not been to the War Department that day at all.

11.)
Millard, page 106

How about the busy Major Eckert? He, too, . . . did not return to office that night. There is no record now of how he spent the evening, but the news of the assassination reached him at his home, where he stood in his bathroom, shaving.

37 12.)
Millard, page 106

They left . . . David Bates to handle the War Department telegraph that night and he yawned through one of the dullest evenings. . . . Only three

bedroom. He was nearly undressed when the news of the assault on Seward was conveyed to him. . . .

10.)
Why Was L. Murdered? p. 34

Stanton . . . testified under oath that Lincoln did not visit the War Department at all after April 13 . . .

11.)
Why Was L. Murdered? p. 38

Now as to Eckert. Was he at his post . . . ?

He was not.

. . . . we have no record of his doings that night . . . and . . . at half past ten he was found at home shaving, when one of the telegraphers came . . . to advise him of the catastrophe.

12.)
Why Was L. Murdered?
pps. 35 & 38

P. 38 . . . The cipher department was left in charge of Mr. Bates; . . . Bates confirmed the report of a quiet evening. . . .

messages were recorded that night. . . .

P. 35 Only three telegrams . . . are . . . on record as having arrived . . . during the evening. . . .

13.)
Millard, page 108

Parker was . . . a month short of 35. Born in Frederick County, Virginia, he had been a carpenter around Washington, had served three months with the Union Army in 1861 and had then joined the Metropolitan Police Force. He lived at 750 L Street with a wife and three children . . .

This John Parker was something less than a model patrolman, to judge by the records. On October 14, 1862, he was on trial before the Police Board for using profane, coarse and insolent language to a grocer who tired of running a rest room for lazy police. He was also accused of violent and disrespectful language to the superior officer who investigated.

For these Parker was "punished" by a reprimand and transfer to another precinct.

13.)
Why Was L. Murdered?
pps. 11, 12, 13

Parker was born on May 19, 1930, in Frederick County, Virginia. He later became a carpenter in the city of Washington, and enlisted in the army shortly after the outbreak of the war. When the Metropolitan Police Force was organized . . . he became one of its first patrolmen. At that time he was married, had three children, and lived at 750 L Street.

His record as a police officer is not one that inspires great confidence. . . . About a year after joining the Force, he was charged with . . . the use of violent, coarse and insolent language. It appears that the owner of a grocery store had complained that officers were . . . loafing in front of his establishment . . . the Police Board found that. . . . "The language he used . . . was

The following months. . . . He was charged . . . with insulting a lady who had applied for police help. Again he was found asleep on a streetcar instead of walking his beat and freed on the ingenuous defense that he had gone aboard to investigate the squawking of ducks.

14.)
Millard, page 108

In April, 1863, we find Parker on trial again, this time charged with being drunk and disorderly in a house of ill fame operated by one Annie Wilson, and with having fired his pistol through a window of that establishment. In his defense Parker paraded Annie herself and a crew of her girls as witnesses. They all

exceedingly violent and disrespectful," (to his superior) . . . he was reprimanded and transferred to another precinct.

P. 13 . . . a fortnight later . . . he was accused of being found asleep on a street car when he should have been walking his rounds; but the charges were dismissed upon Mr. Parker's statement that he . . . had heard the squawking of ducks, and . . . had entered the car to ascertain the cause . . .

. . . it was said . . . that he . . . had used insulting language to the lady making the complaint.

14.)
Why Was L. Murdered? p. 12-13

On March 16, 1863, Parker again found himself before the Police Board. . . . This time he was accused of . . . having visited a house of prostitution, kept by a Miss Annie Wilson . . . that he had fired a pistol through the window.

. . . The witnesses, employees of the house in question,

testified warmly to the good character of John Parker, one girl going so far as to cry indignantly that John had been staying at the bawdy house for five weeks and had never once been seen drunk. . . .

38 . . . After this Parker . . . stayed . . . off the Trial Board records. His name appeared only once, when he was examined by a police doctor after being kicked by a man he was trying to arrest.

proved staunch champions for the defendant, one of them going so far as to declare that he had never in his life seen Parker drunk, "and he had been in that house for five weeks."

Some weeks later, Parker received a severe kick from a man he was endeavoring to arrest. His injuries required the visit of a police physician.

15.)
Millard, page 108

. . . On April 3, 1865, eleven days before the assassination, Mrs. Lincoln wrote a note on . . . to Provost Marshal James R. O'Beirne:

"This is to certify that John F. Parker, a member of the Metropolitan Police has been detailed for duty at the Executive Mansion by order of

Mrs. Lincoln

The next day she wrote O'Beirne again, asking him

15.)
Why Was L. Murdered? p. 14

. . . In a letter written by her (Mrs. Lincoln) on April 3, 1865, to James R. O'Beirne, provost marshal . . . , she asked . . .

This is to certify (she stated) that John F. Parker, a member of the Metropolitan Police has been detailed for duty at the Executive Mansion by order of,

Mrs. Lincoln

. . . Mrs. Lincoln . . . settled the matter by . . .

to see that Parker was exempted from the draft.

16.)
Millard, page 109

All the accounts of that time speak of the four persons in the Presidential Box, that night, and later histories generally accept that figure. But here a baffling question arises. Where was Charles Forbes, Lincoln's valet?

Twenty-seven years later, in a sworn statement, Forbes said, "I accompanied him (Lincoln) in the carriage, was with him from the carriage to the box in the theater, and was in the box when the assassin fired his fatal shot."

17.)
Millard, page 109

Why was he (Forbes) never mentioned in a single account, never questioned by

asking . . . , "Please have (him and another patrolman) exempt from the Draft."

16.)
Why Was L. Murdered? pp. 23, 447 & 448

Most authorities have, therefore, concluded that only. . . . four persons occupied Lincoln's box. . . . Yet, there is every reason to believe that. . . . The occupants of the box did not number four, but five; . . .

The fifth occupant of the box was Charles Forbes, Lincoln's . . . personal attendant.

Pps. 447, 448. The following is Charles Forbes' sworn statement (dated September 17, 1892.)

. . . I accompanied him in the carriage, was with him from the carriage to the box in the theatre, and was in the box when the assassin fired his fatal shot.

17.)
Why Was L. Murdered, p. 29

It is difficult to envisage a trained news reporter,

news-hungry reporters . . . ?

18.)
Millard, page 109

But there is evidence Forbes was in the Box— . . .

Almost two months after the assassination S. P. Hanscom, the editor of the National Republican, got around to giving his readers a bit of stale news. He had been, he wrote, the last man in the Presidential Box before the crime. He
39 went to deliver an important dispatch that had been entrusted to him at the White House. There was no guard at the door, he reported, no one on duty except Charles Forbes, to whom he gave the message.

. . .

. . . there is no record of any dispatch at all, and none was ever found. Forbes made no public mention of it at all.

on the scene . . . leaving these questions uninvestigated, unanswered . . . why did he not interview Forbes . . .

18.)
Why Was L. Murdered?
pps. 23, 24, 29

. . . there is no lack of verification from other sources.

. . . the editor of the Washington National Republican, . . . S. P. Hanscom, . . . was, probably, the last person at the box of the President prior to the assassin's entry of it. (He) went there for the purpose of delivering to the President a message, which (he had been) requested to convey from the White House. Upon approaching the door . . . . (he) found no other person . . . than Mr. Charles Forbes.

Page 29 . . . If a document was found on Lincoln's body, the story has never been told. If Forbes failed to deliver, it, he never disclosed the fact.

19.)
Millard, page 109

Hanscom really did visit the Presidential Box. To get to it he had to ask two patrons in the Dress Circle to move their chairs so he could get by . . . permitting a glimpse of the envelope he carried.

These two, a Lieutenant Crawford and a Captain McGowan. . . .

19.)
Why Was L. Murdered?
p. 25

Testimony from several witnesses proves that Hanscom's tale was founded on fact and was not the product of an overwrought imagination. Lieutenant Crawford, (and) . . . Captain Theodore McGowan . . . saw Hanscom . . . (he) exhibit(ed) . . . an envelope. . . .

20.)
Millard, page 109

. . . At the trial McGowan's testimony made no mention of either a name or message.

20.)
Why Was L. Murdered?
p. 27

. . . the witness McGowan . . . made no mention whatsoever of him. (Hanscom).

21.)
Millard, page 109

. . . . the coachman, Burns . . . at some time during that evening Forbes and Parker came out together and took him into the saloon next door for a drink.

21.)
Why Was L. Murdered?
pps. 16, 17

. . . Burns, Lincoln's coachman, stated that " . . . The special police officer and the footman of the President came up to him and asked him to take a drink with them. . . . "

22.)
Millard, p. 110

Later that night Clara Harris gave her sworn statement . . .

. . .

The statement should have aroused feverish interest, but it didn't, for the simple reason that Clara Harris made another statement a couple of days later and *left that part completely out.*

22.)
Why Was L. Murdered?
p. 26

What makes Miss Harris' statement . . . doubly remarkable is that it differs so radically from the sworn statement she made . . . two days later. . . . She must have forgotten the man . . . completely. . . .

23.)
Millard, page 114

But Benn Pitman's original handwritten transcript of the testimony is still in the National Archives Washington, containing the important part of Fletcher's story which was baldly omitted from the published version.

In the testimony that failed to reach print, Fletcher told how, seated in front of his stable, he heard passers-by talking of the assassination "and they were saying that it was men riding on horseback that had shot President Lincoln."

23.)
Why Was L. Murdered?
pps. 110, 112, 113. (The printed testimony and a photostat of Pitman's handwritten official report are reproduced in Eisenschiml's book.)

p. 110 . . . the interesting part of his (Fletcher's) story begins where Pitman's report leaves off. Fletcher (stated) that he overheard people on the sidewalk saying "that it was men riding on horseback that had shot President Lincoln."

40 24.)
Millard, page 114

And it turns out that John Fletcher, . . . was no mean liar himself . . .

His testimony placed him near the Navy Yard bridge at ten minutes to 12 . . .

But on the blotter of the Metropolitan Police Force is a list of people . . .

According to that record, John Fletcher was at police headquarters . . . at some time between 11 o'clock and midnight.

24.)
Why was L. Murdered?
pps. 110, 111.

According to this hostler's testimony at the conspiracy trial, he did not go to the police station until after one-thirty A.M., while the police records mark the time of his appearance at headquarters before midnight . . . other parts of Fletcher's story . . . do not ring quite true either.

25.)
Millard, page 114

. . . Fletcher . . . told his story to a detective named Charley Stone. Stone immediately took him straight to the headquarters of General G. C. Auger, . . .

Now, of course, there would be a swift concentration of pursuit along the road. . . . Troops would be immediately dispatched to question Sergeant Cobb at the bridge. . . .

But nothing at all was done . . .

No troops set out. Nobody questioned the guards at the Navy Yard bridge.

25.)
Why was Lincoln Murdered? p. 114

(Fletcher) . . . went in company with a city detective named Stone to General Augur's headquarters. . .

. . . Now, of course, General Augur would surely move every man at his command to follow the culprits. But not a single soldier was dispatched to the Anacostia bridge. . .

26.)
Millard, page 114

. . . at about that time one Gleason burst into Auger's headquarters, begging for a cavalry troop so that he could grab Booth . . .

Gleason was flatly refused. To make certain that he did nothing on his own . . . he was confined to Auger's headquarters the remainder of the night on the pretense that his services were needed there.

27.)
Millard, page 114

The first and most important job, of course, would be to identify the assassin and broadcast his identity and description . . . In the first few minutes after the shot, seventeen persons had rushed to . . . Police Headquarters to swear to Booth's identity . . . both Richards of the . . . Police and General Anger were in constant touch with Stanton. . .

26.)
Why Was Lincoln Murdered? p. 114

It could not have been much later when Captain Gleason put in an appearance at Augur's office . . . He begged to be given a mounted squad, . . . but he . . . was flatly refused. Gleason was told that his services were of more value in Washington; . . . he was . . . kept idling at headquarters until morning.

27.)
Why Was L. Murdered?
pps. 66, 68

. . . If there was to be a successful hunt for the murderer, it was imperative that both his identity and his description should promptly be made public.

p. 68 . . . The police blotter of Washington for that night shows the arrival of not less than seventeen persons at Richards' headquarters between eleven and twelve o' ck . . . all of whom knew who the murderer was.

28.)
Millard, pps. 114 & 155

. . . Stanton waited almost four hours before releasing the first notice of the assassination to newspapers.

41 He waited another hour after that — until the morning papers would be well into their press runs — before announcing the name of the suspect . . .

. . . The Richmond Whig got no notice at all . . . until the following Monday. It was twelve days before Macon, Georgia, heard the news.

28.)
Why Was L. Murdered?
pps. 65, 66, 84, 85.

P. 65 . . . the first dispatch of the Secretary of War was not written out until . . . more than three hours after Booth's . . . deed; . . .

P. 66 . . . But not until two hours later did Booth's name appear in the telegrams, and by that time it was too late for some of the morning papers to print it.

P. 85 . . . the Richmond Whig did not print the news . . . until Monday morning, April 17.

P. 84 . . . the Macon Daily Evening News, . . . did not receive Stanton's dispatches until April 26 . . .

29.)
Millard, page 115

One L. A. Gobright of the Associated Press was just closing his Washington office when the terrible news came. Rushing out, he quickly wired his papers:

. . .

From there Gobright hurried to Ford's Theater for

29.)
Why Was L. Murdered?
p. 73

. . . L. A. Gobright, agent of the Associated Press at the Capital . . . was about to close his office . . . when he was informed of the tragedy. Rushing to the telegraph office, he sent a short special . . .

more details . . . the man . . . Kent found the derringer on the floor.

30.)
Millard, page 115

Suddenly Gobright flashed a second telegram to his newspapers. Without a word of explanation . . . this one ordered the papers to disregard the news he had sent.

31.)
Millard, page 115

And shortly after the assassination, every commercial telegraph line out of Washington went dead and remained dead for nearly two hours.

. . .

The break . . . was never cleared up. It becomes even more of a mystery with the discovery that no very strenuous efforts were ever made to explain it . . . it would be two years before any mention . . . got into official records . . .

. . . Stanton's too-busy aide, Major Eckert . . . Asked if he knew anything . . . he tore over to Ford's Theatre . . . and was fortunate enough to find Booth's derringer on the floor . . .

30.)
Why Was L. Murdered?
p. 75

. . . Gobright . . . sent a peculiar wire to the papers that subscribed to his services . . .

OUR WASHINGTON AGENT ORDERS THE DISPATCH ABOUT THE PRESIDENT "STOPPED".

31.)
Why Was L. Murdered?
pps. 78, 79

A bizarre incident on the night of April 14 was an interruption of all telegraphic communication between Washington and the outside world,

No official mention of this break . . . was ever made; . . . Finally . . . this matter was brought to the fore, and Major Eckert . . . was put on the witness stand. (He testified) "It was my impression at the time they were cut . . .

Q. Was there an investigation into what was the . . . cause . . .?

about (it) . . . replied. "It was my impression at the time they were cut . . ."

. . . asked, "Was there an investigation into what was the real cause . . .?"

Major Eckert's answer to that was a classic, "No, sir. It did not at the time seem to be sufficiently important."

A. No, sir. It did not at the time seem to be sufficiently important . . .

42 32.)

Millard, page 115

The first order for patrols . . . went to Colonel Thompson at Darnestown, northwest of Washington, apparently on the peculiar theory that a murderer employed by the South would seek refuge in the country occupied by his bitterest enemies.

32.)

Why Was L. Murdered? P. 91

. . . . Colonel Thompson, commanding at Darnestown, was probably the first to be instructed . . .

For unfathomable reasons it was deemed advisable to arouse first the northern and northwestern environs . . . It was a direction the assassins could hardly be expected to take. The roads . . . led into Union territories where neither shelter nor aid would be available . . .

33.)

Millard, page 116

. . . Booth was supposed to have shouted . . . to Lloyd, "I am pretty certain that we have assassinated the

33.)

Why Was L. Murdered p. 171

. . . John M. Lloyd . . . quoted one of them (the assassin) as saying: "I am

President and Secretary Seward."

. . . By not mentioning any other Cabinet Member, he implied that no plot against any others existed.

pretty certain that we have assassinated the President and Secretary Seward." Not one word about Johnson. If the latter's death had been included in the murderers' plans, how could they be so sure . . . that Johnson was unharmed?

34.)
Millard, page 117

John Parker had vanished after the assassination. Where he went or what he did to soothe his guilt-ridden soul that night, nobody knows. But at 6 o'clock Saturday morning he stumbled into Police Headquarters towing a suspect—a prostitute named Lizzie Williams . . .

Lizzie was promptly discharged.

34.)
Why Was L. Murdered?
p. 17

What Parker did immediately after the assassination has not been definitely ascertained. The police blotter of that night shows that at 6 A.M., . . . Parker brought to headquarters a woman by the name of Lizzie Williams. One can visualize . . . the patrolman, made desperate by the tragedy he should have and could have prevented, roaming the streets . . . all night long . . . as an atonement . . . Parker . . . brought in a woman of the streets who . . . was promptly discharged.

34a.)
Millard, page 117

He (Parker) remained on the police force, . . . until

34a.)
Why Was L. Murdered?
p. 19

July 27, 1868 . . . He was

July, 1868, when . . .

He was caught sleeping on his beat . . . even his own superior officer testified that he had been ill. From an unnatural tolerance, the trial board had swung to an . . . unnatural tolerance, almost as if some mysterious protection . . . had been . . . withdrawn.

. . . Secretary Stanton, too, had just been fired.

35.)
Millard, page 117

. . . O'Beirne was writing in his journal, "Sam'l Cox. His mill servant states to another . . . that Cox had been cooking provisions lately & carrying it to persons down in the swamp . . ." That close O'Beirne came to making the capture then . . .

43 36.)
Millard, page 118

Captain Beckwith, Grant's chief telegrapher and cipher operator, had been sent to Port Tobacco . . . to open a telegraph station. O'Beirne made the error of telling Beckwith what he had found

found asleep on his (Parker's) beat . . . although he . . . had been ill, and . . . the sergeant . . . confirmed the statement.

Parker's last offense was perhaps the least important one . . .

. . . Yet the official axe fell promptly.

A few weeks prior . . . Stanton had . . . been ousted.

35.)
Why Was L. Murdered?
p. 120

In a diary (O'Beirne wrote) "Samuel Cox . . . His mill servant states . . . that Cox had been cooking provisions lately and carrying it to persons down in the swamp . . ."

That close O'Beirne came to getting his man.

36.)
Why Was L. Murdered?
pps. 122, 123

When Major O'Beirne fell in with Captain Beckwith . . . he gave Grant's telegraph operator a summary of his achievements and plans . . . This officer . . .

out so far. The cipher operator promptly cut into the Washington line and flashed the whole story to Stanton.

Back came a report and, to O'Beirne, bewildering reward for his zeal — a flat order from Stanton to remain on the Maryland side . . .

cut into the telegraph lines leading to Washington and gave to the War Department the gist of the information he had r e c e i v e d . . . One can imagine his (O'Beirne's) surprise and despair when orders came over the wire from Washington to . . . remain on the Maryland side of the Potomac.

37.)
Millard, p. 119

So the body of a man was borne back to Washington — the body of *some* man. Lafayette Baker, g r i n n i n g harshly, would soon be remarking to a friend, "*I intended to have his* body, dead or alive, or a *mighty good substitute for it.*"

37.)
In The Shadow of L's Death, pps. 73, 74

. . . After a little while Baker's friend said, "'I am glad that they got Booth.'"

. . . (Baker) smiled, and said, "So am I. *I intended to have his body, dead or alive, or a mighi good substitute for it . . .*"

38.)
Millard, p. 117

Arnold a n d O'Laughlin had been arrested so swiftly that the War Department unwittingly betrayed itself. With them . . . the orders for arrest came almost immediately. Afterward Stanton tried to cover up by . . . a letter . . . but the actual

38.)
Why Was Lincoln Murdered? p. 49

On what information could O'Laughlin and Arnold possibly have been suspected, unless their names had been known to the Washington authorities . . .? In arresting these two men so quickly, the War Department erred

arrests came *before* the letter. Only prior knowledge of Booth's plot . . . could have accounted for those swift arrests.

39.)
Millard, p. 120

. . . Edward Bates, the former Attorney General . . . called Speed's opinion, "The most extraordinary document I ever read, under the name of a law opinion . . ."

. . . Orville Browning, later Secretary of the Interior, cried that the Commission was without authority, its proceedings void. "The execution of these persons," he protested, "will be murder."

40.)
Millard, p. 116, par. 4, lines 3-9

The Surrattsville Tavern . . . was no more than a ramshackle farm tavern with a peach orchard . . . and a few sheds and barns lying across . . . the road . . . His (John's) mother had leased the placed to one John Lloyd for $600 a year.

. . . The (slip points), however, to some secret knowledge possessed by the Secretary of War and his department.

39.)
Why Was Lincoln Murdered? pps. 230, 231

"This is the most extraordinary document I ever read, under the name of a law opinion," he (Edward Bates) declared. . . .

. . . Orville Browning, later Secretary of the Interior, was moved to a similar expression . . . "This commission was without authority," he wrote, "and its proceedings void. The execution of these persons will be murder."

40.)
In the Shadow of L's Death, p. 91

It was a solitary farm tavern at a crossroad, a few sheds and barns, . . . and a peach orchard . . . the farm was afterward let . . . for $600 a year.

44 41.)

Millard, P. 105, Column II, lines 14-16 from bottom.
"He (Lincoln) complained that a military escort—made so much noise — that he could (not) h e a r himself think."

41.)

Shadow, P. 5, lines 9-10 from bottom
"The burden of his (Lincoln's) complaint against the escort was that he and Mrs. Lincoln could not hear themselves talk."

42.)

Millard, P. 107, Column I, line 6, from bottom
"Paine had the strength to subdue the . . . still-muscular Lincoln."

42.)

Shadow, P. 9, line 7 from bottom
"Paine w i t h h i s gigantic strength, was to have subdued the powerful Lincoln."

43.)

Millard, P. 114, Column II, Par. 2
"Now, of course, t h e r e would be a swift concentration of pursuit along the road identified by Fletcher . . .
But nothing at all was done . . ."

43.)

WHY? P. 116, line 1.
"The story John Fletcher told should have caused all pursuit to converge on the roads indicated by Fletcher . . . but this was not the immediate result."

44.)

Millard, P. 114, Column II, lines 9-10 from bottom.
"Both Richards—and General Augur were in constant touch with Stanton."

44.)

WHY? P. 68, line 2 to 10
"Richards immediately got in touch with G e n e r a l Augur, who . . . in turn hardly could have failed to acquaint Stanton . . . with the facts.

45.)
Millard, P. 116, Column I, line 4
"The two were riding—along one of the best known unofficial highways—the advertised route of spies and couriers between Washington and Richmond."

45.)
WHY? p. 97, last 4 lines
"The only likely route for Booth . . . was what was then known as the underground railway to Richmond and was travelled by spies and dispatch-bearers—."

46.)
Millard, P. 116, Column I, Par. 6 from bottom, line 1
"Booth was s u p p o s e d to have shouted back to Lloyd, 'I am pretty certain that we have assassinated the President and Secretary Seward.' (Par. 5 from bottom). By not mentioning any other cabinet members, he implied that no plot against any other existed."

46.)
WHY? P. 171, lines 16-21
"Lloyd . . . quoted one of them as saying: 'I am pretty certain that we have assassinated the President and Secretary Seward.' Not one word about Johnson. If the latter's death had been included—how could they be so sure—that Johnson was unharmed?"

45 47.)
Millard, P. 116, Column II, Paragraph 5, line 1
"Herold explained that they were headed toward Washington — They were riding south, Herold admitted, but only to reach the Potomac in the hope of finding a boat headed north."

47.)
WHY? P. 258 Par. 2, last 3 lines
"The fugitives were in a hurry to reach the Potomac, going south, Herold claimed, that they might find a boat to take them back north to the Capital."

48.)
Millard, P. 117, Column II, Line 9
"Major O'Beirne — picked up a clue (line 20) two of these walked on crutches. (line 12) — It was a false trail.

48.)
WHY? P. 123, line 9-11 from bottom
"A new . . . clue had been discovered. A hired girl . . . reported . . . two men, one of them on crutches . . . The two men were never found, however.

49.)
Millard, p. 118, Column 1 Paragraph 2, line 2
"The three soldiers, who openly confessed to harboring, aiding and protecting the assassins were never tried or punished—Jett was even used as a government witness—."

49.)
WHY? P. 303 lines 4-8
"Jett, Bainbridge and Ruggles—never denied their respective parts, but none of them were ever prosecuted, and Jett even appeared as a witness for the government."

50.)
Millard, P. 118, Column II, Paragraphs 4 & 5
"The accepted story, . . . that the one door of the barn was padlocked"—It is significant, then, to discover that double doors were on all four sides—. " 'The authority for that is William Garrett, and his brother added the information that "there were doors that fastened on the inside.' "

50.)
Shadow, P. 70, last paragraph, P. 71, top
"According to this testimony there was only one door—. The Reverend Richard B. Garrett — states that double doors were on all four sides —. William H. Garrett, writing in the Confederate Veteran in April, 1921. confirms — there were doors that fastened on the inside."

51.)
Millard, P. 118, Column II, Paragraph 6.
Two years afterward Lieutenant Baker — said, "Only one door of the barn was opened—.

51.)
Shadow, P. 71, last 6 lines
Lieutenant Luther B. Baker, on June 1867 (said) "Only one door of the barn was opened".

46 52.)
Millard, P. 119, Column 1, line 9 from bottom
"Would a dying man be surprised at hearing his own name spoken?"

52.)
Shadow, P. 55, last line
"What can be the meaning of this? A dying man hears his name mentioned — and acts surprised.

53.)
Millard, P. 119, Column II, Par. 5
"Lafayette Baker, grinning harshly, would soon be remarking to a friend, "I intended to have his body, dead or alive, *or a mighty good substitute for it.*"

53.)
Shadow, P. 71, last line
"(Baker) smiled, and said *"—I intended to have his body, dead or alive, or a mighty good substitute for it."*

This incident is taken from a very rare book, by Velasquez, Story of the Civil War, (1890). The significant thing is that in the original, the last part of Baker's remark is *not* in italics. (See Shadow, page 379, Note 43.) Eisenschiml put them in, and Millard copied them—a dead give-away.

54.)
Millard, P. 119, Column II, Last 4 lines
"—Mary Surratt was—tortured by having the hope of reprieve dangled before her —."

54.)
WHY? P. 179 Par. 2, last lines.
"To Mrs. Surratt, in all likelihood, a promise of clemency was held out."

55.)
Millard, P. 120, Column I, Paragraph 3 from bottom
"On August 17, Lafayette Baker telegraphed from Louisville that he had uncovered a plot to rescue the prisoners—. The prisoners were placed in solitary confinement, denied the right to exchange a single word—watched every minute by special guards.

55.)
WHY? P. 181, Paragraph 2, line 2, P. 182, line 3 from bottom
On August 17 — the chief of the secret service dispatched a message saying that he had discovered a conspiracy to liberate the state prisoners—. A little later, (they) were confined in a small—room. "We were," wrote Arnold, "denied all intercourse with everyone on the—island, and were always accompanied by an armed guard—."

56.)
Millard, P. 120, Col. I, last line
The American Vice-Consul at Liverpool—got a shocking lesson—. Upon a consultation with the Secretary of War and the Judge Advocate General, it is thought advisable that no action be taken etc."

56.)
WHY? P. 200, middle
—the vice consul at Liverpool probably got the shock of his life when he received the reply—. —upon a consultation with the Secretary of War and the Judge Advocate, it is thought advisable that no action be taken, etc."

47 57.)
Millard, P. 120, Col. II, Par. 5
"The government hired Albert G. Riddle to—'hunt up or, if necessary, manufacture evidence against the prisoner (Surratt)."

57.)
WHY? P. 206, lines 5-7
"Riddle had been employed to hunt up, or manufacture, testimony against the prisoner."

58.)
Millard, P. 106, Col. I, Par. 2
Booth's original plot against Lincoln was fantastic but not necessarily unworkable. —From a legal standpoint, it was not a crime.

58.)
Shadow, P. 8 Par. 2, Line 7
To many, the abduction of a President . . . may h a v e s e e m e d preposterous. On closer analysis, though, it would be found e n t i r e l y practical . . .
(P. 16, last line) A successful abduction . . . would not have been contrary to the laws of civilized warfare."

59.)
Millard, P. 105, Col. I, Par. 5 line 3.
Stanton was late. Stanton was always late to cabinet meetings . . . to feel the power of his position.

59.)
WHY? P. 4, line 6
Stanton . . . usually came late. It was his way of indicating the superiority he felt . . .

60.)
Millard, P. 105, Col. I,
Then Stanton made his . . . entrance. Lincoln seemed to freeze . . . He said abruptly, "Gentlemen, let us proceed to business."

60.)
WHY? P. 4, line 3
Stanton entered. The President stopped a b r u p t l y. "Gentlemen," he said, "let us proceed to business."

61.)
Millard, P. 37, Par. 4, lines 7-8
"— Excitement over the visit of the President—was increased by the news that the party would include General and Mrs. U. S. Grant. The Lincolns could be seen any time."

61.)
WHY? P. 59, last paragraph
"Lincoln was not an unusual sight in his own capitol, but Grant was sure to arouse—curiosity."

62.)
Millard, P. 104, Col. I, line 7-9
"Announcements played up the presence of General Grant in bold headlines and mentioned the Lincolns as a small-type after-thought."

62.)
WHY?, bottom ad on P. 60 also P. 59, par. next to bottom
"The advertisement is centered around—Grant, barely mentioning . . . the President.

48 63.)
Millard, P. 105, Col. II, lines 15-19
"Lincoln was stunned, his voice . . . was almost pleading . . . Grant (left) the chief . . . staring after him with an expression of deep hurt . . .

63.)
WHY? P. 61, line 10.
"Lincoln felt the affront keenly . . . as Grant took his leave. But apparently his plea fell on deaf ears."

64.)
Millard, P. 111, Par. 4, line 4
The world knows when Lincoln died, but — no one knows the time when he (Lincoln) was shot. —the

64.)
Shadow, P. 351, line 1 & last lines
"It is known to a second when Lincoln died. —No one, however, has recorded the — time when (he) was

time usually accepted is 10:13—	shot . . . Booth fired his shot at or close to 13 minutes past 10:00 PM.
65.) Millard, P. 113, Col. I, last line (Cobb) thought the man at the bridge had been shorter and of lighter complexion . . . A good defense lawyer could have pounced on this uncertainty to build up Herolds defense, but Frederick Stone, his counseler, said nothing at all about this."	65.) WHY? p. 253, par. 2 and 3. "he was taller (than the second horseman)—He had a lighter complexion." —A clever lawyer might have made something out of this —But Frederick Stone, who conducted the defense, did little more than apologize . . ."
66.) Millard, P. 116, Par. 4, from Bottom (The four detectives) were certain that the strangers had been Booth and Herold, but by keeping quiet, they hoped to make the capture themselves.	66.) WHY? P. 119, last paragraph (Lovett, the leader of the detectives): "I was under the impression that Booth and Herold were in the neighborhood . . . and we would get the whole of them."

49-50 • • •

51

IN THE UNITED STATES DISTRICT COURT
(Filed Jan 28 1954)

State of Florida }
County of Sarasota } ss.

Joseph Millard of 2462 Belvoir Boulevard, Sarasota, Florida, being duly sworn, deposes and says: Although

not a party-defendant in this action, I am making this affidavit in opposition to the plaintiff's motion for summary judgment.

I am the author of a story which was entitled "History's Maddest Murder Case". This title was changed by the editors of the defendant, Fawcett Publications, Inc., to "America's Greatest Unsolved Murder". The story was published in the February 1953 issue of defendant's magazine True. This story is the product of my own ingenuity, research and hard work. The historical facts which are contained in the story are facts of history which have appeared in various works from time to time and which I am informed are not in and of themselves proper subjects of copyright. It is true that there are historical novels and stories concerning the assassination of Abraham Lincoln and the death of John Wilkes Booth. Plaintiff has no monopoly upon historical facts. Plaintiff
52 in his two books has set forth many pages of notes and credit lines and revealed the sources of his material.

I spent five and one-half months, twelve hours a day, in preparing this manuscript. I have invested thousands of dollars in my own library, which includes books, magazines, newspapers, journals and documents dealing with this period of American history. I am the owner of a well-worn admission card to the research rooms of the National Archives in Washington. There is not one statement contained in my article which has not been checked and double checked through every available source. The comparisons which plaintiff has set forth between his work and mine are comparisons of historical data, and no one is given liberty to alter the facts. It is a fact that Abraham Lincoln was shot on April 14, 1865. It cannot be reported in any other way by either the plaintiff, myself or anyone else. I did not copy any of my material from the plaintiff's copyrighted works. There are simi-

larities in historical sequence between his works and mine, but that is so only because we are both interested in the same historical subject matter.

I composed my own original work. It is based upon historical fact and it is not copied from the plaintiff's copyrighted material.

/s/ Joseph Millard

Sworn to before me this
12 day of December, 1953.
(Seal) Edith B. Land
Notary Public, State of Florida at large
My commission expires May 24, 1955.
Bonded by American Surety Co. of N. Y.
Sarasota County
Sarasota, Fla.

53 • • •

54 TRANSCRIPT OF PROCEEDINGS
(Filed June 20, 1956)

had in the above-entitled cause before the Honorable Philip L. Sullivan, one of the Judges of said Court, in his court room in the United States Court House, at Chicago, Illinois, on February 11, 1954.

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55 • • •

56 • • • The Court: Well, now, I presume you gentlemen are familiar with how our court of appeals here anyway feels about summary judgments. I think only about one-half of one per cent ever stand up. If there is any issue of fact at all, they say, "Well, give them their day in court."

Now, I don't know how a summary judgment could be entered here for this reason. He says, that is Millard, and he is the defendant, that he did not copy any of your book. Now, he is entitled to prove that, isn't he?

• • •

57-62 • • •

63 • • • The Court: First of all, there is a motion for a summary judgment. That will be denied, and you can
64 raise your point in the trial, of course.

• • •

65-67 • • •

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At Chicago, Illinois, in said Division and District on February 11, 1954. Present: Honorable Philip L. Sullivan, District Judge:

This day come the parties by their counsel and a pretrial conference is held and upon due consideration the Court being fully advised in the premises it is

Ordered that the motion of the plaintiff for a summary judgment be and the same hereby is denied and on agreement of the parties by their counsel it is

Further Ordered that this cause be and the same hereby is referred to Special Master in Chancery James O'Shaughnessy, Esquire.

69-75 • • •

76

DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS
(Filed Feb 25 1954)

The defendant, Fawcett Publications, Inc., a Delaware corporation, makes the following response under oath to plaintiff's request for admissions heretofore served on defendant's attorneys on February 17, 1954, for the purpose of this action only and subject to all pertinent objections as to admissibility which may be interposed at the trial:

1. Defendant admits the statements in this request.

2. Defendant is without sufficient knowledge to admit or deny the statements contained in request 2.

3 and 4. Defendant admits the statements contained in requests 3 and 4.

5. In answer to plaintiff's request in paragraph 5 to admit the statements made in paragraphs 1 to 27, both inclusive, of plaintiff's Affidavit in Support of his Motion for Summary Judgment heretofore filed herein, defendant makes the following response to each respective paragraph thereof:

Par. 1. Defendant is without sufficient knowledge to admit or deny the statements contained in Paragraph 1.

Par. 2. Defendant denies all of the statements contained in Paragraph 2 except the bare statement that
77 plaintiff wrote said book "Why Was Lincoln Murdered?", which statement defendant admits.

Pars. 3, 4 and 5. Defendant is without sufficient knowledge to admit or deny the statements made in these paragraphs.

Par. 6. Defendant denies all of the statements contained in Paragraph 6 except the bare statement that plaintiff wrote said book "In the Shadow of Lincoln's Death", which statement defendant admits.

Pars. 7, 8, 9 and 10. Defendant is without sufficient knowledge to admit or deny the statements in these paragraphs.

Par. 11. Defendant denies all of the statements in Paragraph 11 except the following which it admits:

(a) That in July 1947 it published in its magazine, "True", the articles entitled: "The Devil's Errand Boy" by J. J. Millard;

(b) That a true and correct copy of said article, pages 73 to 77, both inclusive, is attached to plaintiff's said affidavit as Exhibit "A."

(c) That Joseph Millard is the same person who is the author of the article, "America's Greatest Unsolved Murder;"

(d) That at the times mentioned in this paragraph Ralph Daigh was Editorial Director of defendant's said magazine;

(e) That the words quoted in Paragraph 11 of plaintiff's said affidavit do appear in said article, "The Devil's Errand Boy," but defendant denies each and every other alleged fact, statement, inference, conclusion, implication, or conjecture contained in
78 said paragraph 11 of plaintiff's said affidavit.

Par. 12. Defendant is without sufficient information to admit or deny the statements contained in Paragraph 12 of plaintiff's said affidavit except for the statement that plaintiff delivered to defendant's counsel said article by said Professor Paul H. Buck, which statement defendant admits.

Par. 13. Defendant is without sufficient knowledge to admit or deny the statements in this paragraph.

Pars. 14 and 15. Defendant denies all of the statements contained in Paragraphs 14 and 15 of plaintiff's said affidavit except the bare statement that defendant published in the February 1953 issue of "True" magazine the article entitled "America's Greatest Unsolved Murder," which defendant admits.

Par. 16. Defendant admits that plaintiff presented defendant with copies of plaintiff's said two books but states that plaintiff did so only in order to bolster up his unjust and baseless claim of infringement.

Par. 17. Defendant denies that it ever did or that it has continued to infringe any copyright of plaintiff, but admits that plaintiff has made claims of such infringement, which claims defendant avers are utterly without basis.

Pars. 18 to 21 (j), both inclusive. Defendant is advised that it is not required to respond to these requests in the form in which they appear in Paragraphs 18 to 21 (j), both inclusive, of plaintiff's said affidavit and, there-

fore, makes written objection to the same on the ground that they are utterly improper in form and substance and prays the Court's ruling on said objection.

Par. 22. Defendant is without sufficient information to admit or deny whether plaintiff received any of the communications or had any of the conversations described in Paragraph 22 of his said affidavit. As to the balance
79 of the statements contained in said Paragraph 22, defendant is advised that it is not required to respond thereto for the reason that it is wholly improper in that it calls for conclusions, not facts, and defendant accordingly makes written objection to the same and prays the Court's ruling therein.

Par. 23. Defendant is without sufficient knowledge to admit or deny the facts contained in this paragraph.

Par. 24. Defendant admits that on February 27, 1953, it sent to Charles E. Mason the letter described in Paragraph 24 of plaintiff's said affidavit; defendant is advised that it is not required to answer the remaining statements in said paragraph in that they call not for facts, but for conclusions and comparisons, and defendant accordingly makes written objection thereto, on which objection he prays the Court's ruling.

Par. 25. Defendant admits that the February 1953 issue of defendant's publication "True" was sold to the public at 25¢ per copy. Defendant admits that for the February 1953 issue of "True" there was a gross circulation of 1,898,285 copies, subject to returns and to a further breakdown of subscription and newsstand sales. Defendant admits that the gross advertising revenue was $184,571.00, and the net was $156,885.85, otherwise denies the statements in this paragraph.

Par. 26. Defendant denies that the article "America's Greatest Unsolved Murder" by J. J. Millard took up 25% of the contents of the February 1953 issue of "True".

Defendant admits that it was one of the features of said issue, otherwise denies the statements in this paragraph.

Par. 27. Defendant denies this request.

80-82 • • •

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ANSWERS TO INTERROGATORIES
(Filed Mar 1—1954)

The defendant, Fawcett Publications, Inc., a Delaware corporation, makes the following answers under oath to the Interrogatories hereto served upon it by the plaintiff on February 18, 1954, pursuant to Rule 33 of the Rules of Civil Procedure:

1. As to each of the sixty-six (66) items included in column 1 of Exhibit "C" attached to plaintiff's Affidavit in Support of his Motion for Summary Judgment, heretofore filed herein, defendant states:

(a) That the source of each of said sixty-six (66) items, as far as defendant was concerned, was Joseph Millard, the independent author from whom defendant purchased the article in question as a piece of merchandise for the sum of $1,850.00 on or about January 30, 1952.

(b) Defendant first saw said article containing said information on or about the month of December 1951; defendant does not know when the author, Joseph Millard, first saw said items or their sources.

2. As to each of the thirty-five (35) items included in Paragraph 19 of plaintiff's said Affidavit in Support
84 of his Motion for Summary Judgment, defendant states: It objects to said interrogatories as being utterly incompetent, irrelevant and immaterial for the reason that said thirty-five (35) items contained in said Paragraph 19 are completely unwarranted conclusions which it would be preposterous to require defendant to answer. Defendant further states that the matters as set

forth in Paragraph 19 of the said affidavit are matters of historical fact and as such are part of the public domain over which no one could assert any ownership.

3. As to each of the fifteen (15) items included under Paragraph 20 of plaintiff's affidavit in support of motion for summary judgment, defendant states: That it objects to said interrogatories as being utterly incompetent, irrelevant and immaterial for the reason that, as stated by plaintiff himself in his said affidavit, the said fifteen (15) items consist in plaintiff's own language of "deductions, conclusions and speculations," which are not the subject of ownership by copyright or otherwise.

4. In response to Interrogatory 4, defendant is advised it is not required to answer this interrogatory because the same is incompetent, irrelevant and immaterial.

5. In answer to Interrogatory 5, defendant states that it merely purchased said story from the independent author, Joseph Millard, and does not know what "sensational discoveries" said Joseph Millard had reference to in the question from the said article.

6. In answer to Interrogatory 6, defendant states the following:

(a) The gross circulation of the February 1953 issue of the magazine "True" was approximately 1,898,285 copies, subject to returns and to a further breakdown of subscription and newsstand sales.

85 (c) The gross receipts from advertising revenue was $184,571.00, and the net was $156,885.85.

86-87 • • •

88

DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS

(Filed Mar 8—1954)

The defendant Fawcett Publications, Inc., a Delaware corporation, makes the following response under oath to plaintiff's request for admissions heretofore served on defendant's attorneys on Friday, February 26, 1954, for the purpose of this answer only and subject to all pertinent objections to admissibility that may be interposed at the trial:

1 (a) and (b). Defendant is advised that it is not required to respond to these requests in the form in which they appear in Paragraph 19 of the plaintiff's Affidavit in Support of his Motion for Summary Judgment, and therefore, makes written objection to the same in that they are utterly improper in form and substance and prays the court's ruling on said objection.

2 (a) and (b). Defendant is advised that it is not required to respond to these requests in the form in which they appear in Paragraph 20 of the plaintiff's Affidavit in Support of his Motion for Summary Judgment, and therefore, makes written objection to the same in that they are utterly improper in form and substance and prays the court's ruling on said objection.

3. Defendant is without sufficient knowledge to admit or deny the statements contained in request 3.

4. Defendant is without sufficient knowledge to admit or deny the statement contained in request 4.

89-98 • • •

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DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADDITIONAL ADMISSIONS

(Filed Oct 5—1954)

The defendant Fawcett Publications, Inc., a Delaware corporation, makes the following response under oath to plaintiff's request for additional admissions heretofore served on defendant's attorneys on September 7, 1954, for the purpose of this answer only and subject to all pertinent objections to admissibility that may be interposed at the trial:

1 (a), (b), (c), (d), and (e). Defendant is without sufficient knowledge to admit or deny the statements contained in request 1 (a), (b), (c), (d), and (e).

2 (a) and (b). Defendant is advised that it is not required to respond to this request in the form in which it appears and therefore makes written objection in that it is utterly improper in form and substance and prays the court's ruling on said objection.

3 (a), (b), (c) and (d). The defendant admits the statements contained in request 3 (a), (b), (c) and (d).

100 4 (a), (b), (c), (d), (e), (f) and (g). Defendant is advised that it is not required to respond to this request in the form in which it appears and therefore makes written objection in that it is utterly improper in form and substance and prays the court's ruling on said objection. Defendant admits that the February, 1953, issue of "True" magazine went on sale on January 21, 1953. The off-sale date for the February, 1953, issue of "True" was February 20, 1953.

5 (a), (b) and (c). Defendant is advised that this request for admissions is not proper in form and therefore makes written opposition thereto and prays the court's ruling on said objection.

6 (a), (b), (c) and (d). Defendant admits the statements contained in request 6 (a), (b), (c) and (d).

7 (a) and (b). Defendant is advised that it is not required to respond to these requests in the form in which they appear and therefore makes written objection in that it is utterly improper in form and substance and prays the court's ruling on said objection.

8 (a), (b) and (c). Defendant is advised that it is not required to respond to these requests in the form in which they appear and therefore makes written opposition thereto that it is utterly improper in form and substance and prays the court's ruling on said objection.

8 (d). Defendant denies the statement contained in request 8 (d).

101 9. Defendant is without sufficient knowledge to admit or deny the statement contained in request 9.

DEPOSITION OF JOSEPH JOHN MILLARD.

(First marginal number is from the pagination as it appears in the record. The second—parenthetical number is as originally in the deposition when it was filed in court.)

JOSEPH JOHN MILLARD, witness for defendant, testified as follows:

Direct Examination of Mr. Millard by Mr. Martineau.

108 (p. 3) I live at 2462 Belvoir Boulevard, Sarasota, Florida, and am an author. I wrote the article "America's Greatest Unsolved Murder" in the February 1953
109 (p. 4) issue of True magazine in the summer of 1951,
110 (p. 5) I believe, and submitted it in the fall.

(The contract, dated January 30, 1952, was marked as Defendant's Exhibit #3, 3/25/54)

111 (p. 6) (Photostat of a stipulation, in lieu of original, was marked Defendant's Exhibit # 3A, 3/25/54)

111 (p. 6) The original title was "History's Maddest
112 (p. 7) Murder Case", which was changed by defendant, and apparently one half of the manuscript was cut out.

113 (p. 8) I spent from 4 to 4½ months on my research and the final writing of the manuscript, but I had done considerable time on it before, I cannot tell exactly how much.

114 (p. 9) Some time around March 1, 1951, I was commissioned by defendant to write the manuscript.

The nature of my research was to assemble all the books and papers and magazines on the subject of the assassination. The actual writing involved one of these months.

115 (p. 10) I met Dr. Eisenschiml, I think, in the fall of
116 (p. 11) 1946, because a neighbor of his said "I couldn't think of writing about it [that subject] if I did not
117 (p. 12) know him". The meeting took place in his library, and I spent say 1½ hours there.

118 (p. 13) My final research was conducted mostly in New York, but I leaned on research undertaken in connection with a previous story, "The Devil's Errand Boy", done several years before.

119 (p. 14) Most of the books I consulted in preparing the True article are here. (They covered about 28 feet of space.)

120-134 (p. 15-25) (Reading the titles of books and magazines on display.)

134 (p. 25) In addition, there were many more, which I did not own.

135 (p. 26) In the fall of 1951 I moved to Florida, and
134 (p. 25) put my books into storage in New Jersey.
135 (p. 26) I had boxes of notes which I burned. Some
136 (p. 27) of them were handwritten, some typed.

137 (p. 28) I have never been an employee of the defendant.

[The parallels, set forth as Exhibit C of Plaintiff's affidavit for summary judgment — later received in evidence as Plaintiff's Exhibit 7 — were from now on referred to as "Quotes"]

138 (p. 29) I got Quote #1 from Father Chiniqui's "Fifty Years in the Church of Rome". This matter of premature news of the assassination was merely
139 (p. 30) mentioned in "The Assassination and History of the Conspiracy" published in 1865, p. 54. It does not mention St. Joseph specifically.

Quote #2 can be found in the archives of the
140 (p. 31) War Department and in the Congressional Club, the ancestor of the Congressional Record. This also refers to Quote #3. Both facts also are stated in Dr. Eisenschiml's book.

141 (p. 32) Before I wrote my article I had read Dr. Eisenschiml's work. He is admittedly one of the greatest authorities on Lincoln's assassination.

Quotes #4 and #5 have as their source "Grant's Memoirs".

(Witness is reading from cards.) These cards were drawn up largely within the last weeks. I listed
142 (p. 33) on them my authorities for the challenged statements.

143 (p. 34) I did not copy Quote #5 from Dr. Eisenschiml.

Quotes #6 and #7 may be considered together.

144 (p. 35) The train trip is from Porter's "Campaigning with Grant", in Century magazine, October, 1897. He says it was a tiresome trip requiring two changes. I also have here Hassan's railroad guide, which gives the time tables for seven years later, so I did use the schedule from the plaintiff.

146 (p. 37) Quote #8 I would say is touched on by every
147-148 (p. 38-39) writer, specifically Badeau in "Grant in Peace". There are other authorities too.

149 (p. 40) On Quote #9 the closest source is Storey's article in the Atlantic Monthly, April 1920. Oldroyd (p. 41) in 1901 in his book of 1901 puts it much
151 (p. 42) shorter. I am afraid I lifted it from Mr. Storey.

Quote #10 I took from Flower's book on Stanton, published in 1905.

152 (p. 43) Quote #11 I took in part from David Bates "Lincoln in the Telegraph Office", and also from
153 (p. 44) "The Great American Myth" by George Bryan.

Quote #12 I took from "Lincoln in the Telegraph Office."

154 (p. 45) Quote #13 is to be considered with #14 and
155 (p. 46) #15. My sources included Dr. Eisenschiml. Sandburg gives virtually the full story of Parker's life, also "The Great American Myth". Crook
156 (p. 47) and Kerkley mention Parker, but these 3 Quotes were available in the three sources I gave.
157 (p. 48) (Witness reads into the record a section of
158 (p. 49) Sandburg's book "The War Years" dealing
159 (p. 50) with the Parker episode.) That is one source.
160 (p. 51) I have never except in Sandburg and Eisenschiml, seen the exact Quote #15, but Sandburg deleted part of it, and it was from Dr. Eisenschiml that I supplied the missing words.

As to Quote #16, I did not get the language
161 (p. 52) from Dr. Eisenschiml. I did not have Forbes' own statement at the time I wrote the article. In the Journal of the Illinois Historical Society is an eye witness account, mentioning two messengers which accompanied the Lincoln party into the box. The guards were frequently called messengers, she [the author] does not identify them.

162 (p. 53) "The Great American Myth" and Gobright's report also mention Forbes.

Another source, Abbot A. Abbot, says "There were no other persons in the box and no one entered or left it until about the time of the assassination". I don't know what he means.

163 (p. 54) W. J. Ferguson in "I Saw Booth Shoot Lincoln", published in 1930, mentions Parker and Forbes, or appears to speak of Forbes, but I do not believe it is conclusive.

As to Quote #17, I wrote four words on my card, "common sense asks that". I cannot remember looking for sources.

164 (p. 55) I did not steal Quote #18 from Eisenschiml, but got it from the National Republican of June 8,
165 (p. 56) 1865. I read it in the library of Congress, for which I have a special card. [Marked Defense Exhibit #4.]

167 (p. 58) My source for Quote #19 is "The Great American Myth", and the documentation comes from
168 (p. 59) the New York Tribune of April 17, 1865. I did not lift it from Dr. Eisenschiml.

As to Quote #20, I studied three versions of the Conspiracy Trial, Pitman, Ben Poor and the Philadelphia Inquirer. I used Poor's and Pitman's; in fact, I did
169 (p. 60) not know the existence of the Philadelphia Inquirer. I have found it since.

I did not lift Quote #21 from Dr. Eisenschiml. I
171 (p. 62) have a statement here from Sandburg, Vol. 4, p. 279 (reads it). This also is found in the "Great American Myth", p. 175. There are other sources, which I do not recall. • • •

172 (p. 63) Q. Did you steal or pirate (Quote #22) from Dr. Eisenschiml? A. I am rather afraid I did. . . . I had no source other than Dr. Eisenschiml for his original statement. • • •

174 (p. 65) I did not steal Quote #23 from Dr. Eisenschiml. It came from a comparison of Pitman and Poor. One thing I did not get from the archives is
175 (p. 66) Pitman's original transcript; I took Eisenschiml's. I have Pitman here, but I did not look at it; also in the "Great American Myth", on p. 14, it deals with the testimony, or at least brings out Fletcher's additional testimony. I did not look up Poor again. I do not know whether it is in the Philadelphia Inquirer.
177 (p. 68) Now there is a piece of Dr. Eisenschiml's which I took from him. According to him, the police record showed that Fletcher had been there some time between 11 o'clock and midnight, and that I had no other source for.

Quotes 24 and 25 may well be considered in conjunction with Quote 23.

179 (p. 70) On Quote 25 I have just quoted my sources. More is from Baker, pages 529 and 530.
180 (p. 71) I did not lift Quote 26 from Dr. Eisenschiml, I found it in Gleason's article, "The Conspiracy Against Lincoln" in the Magazine of History, Feb. 1911. (Read partly into record.)
181 (p. 72) On Quote 27 one thing is from Dr. Eisenschiml: the number of persons rushing to headquarters. In other sources the number is not given. I took that from Dr. Eisenschiml.
183 (p. 74) My sources for Quote 28 are Townsend, "Life, Crime and Capture of John Wilkes Booth", 1865; also Coggeshell, 1920, "The Assassination of Lincoln".
184 (p. 75) Anyone investigating the murder mystery would wonder why a man should be complimented for waiting three hours.

"The Rebel War Clerk's Diary" mentions that
185 (p. 76) rumors of the assassination had reached Richmond on April 16.

186 (p. 77) On Quote 29 my source is Gobright's "Recol-
187 (p. 78) lections of Men and Things in Washington." (Read into record.) The other source is the New York Tribune, April 15, 1865.

188 (p. 79) Quote 30 should be taken together with Quote 29. The same historical sources apply.

189 (p. 80) An additional statement by Gobright says
190-191 (p. 81-82) that a man named Kent picked up Booth's pistol from the floor of the box.

192 (p. 83) My chief historical sources for Quote 31 are Baker and "The Great American Myth."

194 (p. 85) For Quote 32 my sources were Lloyd Lewis in "Myths after Lincoln", who says that the attention [of Booth's pursuers] was thrown to the North, and Stanton who warned to watch the Canadian border. Also the Official Records, in which a telegram appears to Colonel Thompson, that the assassins are supposed to have escaped toward Maryland.

195 (p. 86) Quote 33 (What Booth is said to have shouted to Lloyd) is covered by both Pitman and Poor. By not mentioning any other Cabinet members, I said he implied that no plot against any others existed. It was an inference encouraged by Dr. Eisenschiml's interest in it, I am afraid.

Clara Laughlin and Townsend mention Lloyd's
196 (p. 87) statement; but it is probably reasonable to suppose that that inference was stimulated by some of Eisenschiml's findings.

198 (p. 89) Quotes 34 and 34A are found in "The Great American Myth" and in Sandburg. Now there again perhaps an inference can be drawn from Dr. Eisenschiml.

199 (p. 90) My sources for Quote 35, for the quotation itself is Dr. Eisenschiml. The facts are stated in a
200 (p. 91) number of places, for instance in Oldroyd,

Thompson, Coggesshell and Laughlin. The exact wording I have not seen anywhere else, I don't believe, but in Dr. Eisenschiml's book.

201 (p. 29) Quote 36 I first got from Baker, then in
202 (p. 93) Bates' "Book of the Telegraph", also in the Official Record. Further in Oldroyd.
203 (p. 94) Quote 37 comes from a book by Madame Ve-
204 (p. 95) lasquez, "The Story of the Civil War."

Now, for that I have to thank Dr. Eisenschiml, who put me on the track of that book.

206 (p. 97) I put my italics in, not because anyone else did, but because I wanted to emphasize the important part. I am quite sure there were no italics in the original book.

207 (p. 98) On Quote 38 one of my sources is Clara Laughlin; another is Margaret Leech.

208 (p. 99) My source for Quote 39 are the two diaries
209 (p. 100) —both original quotes. On Quote 40 part of the description is from Baker, some from Sandburg, some from the Lincoln Herald.

210 (p. 101) My source on Quote 41 is a book "Baked Meats for the Funeral", by a man named Haley or Hanley, who wrote as Private Miles O'Reilly.

212 (p. 102) For Quote 42 my source is Sandburg.

213 (p. 103) For Quote 43 my authority is Baker.

For Quote 44 my first authority is common sense. The head of the Metropolitan Police Depart-
214 (p. 104) ment and the head of the military would naturally be in constant touch with Stanton. Sandburg, I believe, implies as much without saying it directly, and I think Oldroyd.

215 (p. 105) For Quote 45 I have a million of authori-
217 (p. 107) ties — Baker, Dewitt, Coggeshell, The New York Evening Post.

218 (p. 108) Quote 46 is a duplicate of 33, and so stipulated.

219 (p. 109) Quote 47 I wish I knew my authority, but it was not Dr. Eisenschiml. I have a blank card here. I did see it in Dr. Eisenschiml's work.

I am equally vague on Quote 48, but I admit
220 (p. 110) reading what Dr. Eisenschiml says on Quote 48.

221 (p. 111) Dr. Eisenschiml cites the O'Beirne papers, which he alone has, and the War Department archives. I did not see it in the archives.

222 (p. 112) Quote 49 was just a fact. Baker tells about the three soldiers. Jett's testimony is in Pitman and Poor. An article by Dougherty was in the Century Magazine of Jan. 1890.

223 (p. 113) The rest is merely facing the fact that three men who probably did more than anyone to help Booth escape, were not brought to trial, and one was brought in by the government. The inference is mine and Dr. Eisenschiml's. It seems so obvious.

224 (p. 114) Quote 50 and 51 logically belong together.

226 (p. 116) Baker merely says something about "the door which faced the wing of the house", which implies that there must have been more than one door.

Either I am getting tired or I've missed the boat
227 (p. 117) here. He says, —"the front barn door facing the west gable —" which is again not conclusive. The only conclusive thing is Garrett's later story, which was back up, that there were doors on all sides.

Q. In all those authorities which you have be-
228 (p. 118) fore you now, it is not stated how many doors there were in this barn, is that right?

A. That is right.

229 (p. 118) Q. In other words, the only question seems to be where you obtained the information that the barn had four doors — is that right?

A. Yes.

230 (p. 119) Regarding Quote 52, I again fall back on common sense. It's possible, even probable, that I was stimulated to think that, because Eisenschiml thought the same thing.

231 (p. 120-121) Quote 53 is a repetition of Quote 37.

232 (p. 121) Quote 54. My authority is Baker and the
233 (p. 122) daily papers. I am relying on a very ancient
234 (p. 123) and very creaky memory, so I wouldn't want to be pinned down.

Re Quote 55 my authority is Samuel Arnold in "The Lincoln Plot" and Baker.

235 (p. 124) My authority for Quote 56 is Oldroyd,
236-237 (p. 125-126) also Harris, also Smoot.

237 (p. 126) On Quote 57 my authority is Welles' Diary.

238 (p. 127) On Quote 58 I refer to Dewitt first.

239 (p. 128) Quote 59 comes from Welles' Diary, and
240 (p. 129) Coggeshell, also Lloyd Lewis. (Quotes verbatim.)

240 (p. 129) On Quote 60 I am stuck for the moment.

241 (p. 130) Nicolay and Hay or Crook, I am not too positive.

Quote 61 has a great many authorities, for in-
242 (p. 131) stance Oldroyd and Harris.

Quote 62. It is no doubt true that these advertisements in the Washington papers had never been
243 (p. 132) reproduced before, but I spent so much time with these newspapers that I got it from the original papers. I merely saw the ads, so I got it, I think, rather from these quotations from Oldroyd and Harris, and "Reveille in Washington":

244 (p. 133) "The news that Grant would accompany the President threw the Tenth Street Theatre into a furor, but Harry and his brothers bestirred themselves

to prepare for a gala evening, well aware that the presence of the Commander-in-Chief would eclipse the patriotic doings in Grover's". This was one of my background pieces.

My authority for Quote 63, I believe, is Crook—I
245 (p. 134) can't tell you the page.
246 (p. 135) Quote 64. Everybody brought out the fact that the time is not known. In the book "The Assassination and the History of the Conspiracy" is a statement which furnishes the hour at which the President was assassinated, which has been stated all the way from half-past nine to half-past ten.
247 (p. 136) I take it that the objection here is to my statement of 10:13 and Dr. Eisenschiml's at an hour close to that.
249 (p. 138) My selection of ten-thirteen came because in the course of the reading I encountered that over and over. Now, I can't lay my hands on any definite spot; but I gathered the impression that 10:13 was the accepted time.
251 (p. 139A) I have yet to find authority for it, but I am very positive that I didn't say 10:13 because Dr. Eisenschiml said it.

My authority for Quote 65 is Pitman and Poor. That is fairly close to what Dr. Eisenschiml said.
252 (p. 140) I don't think that anyone would have to be guided by another book to jump to the same conclusion.
253 (p. 141) My best authority for Quote 66 is the Journal of the Illinois Historical Society.
255 (p. 143) I have been a student of problems involving the Civil War for thirteen years. The books
256 (p. 144) here are probably 10% of my Civil War books. I have written "The Devil's Errand Boy" and
257 (p. 145) "The Spy who saved the Union." The research on those is interlocking. • • •

258 (p. 146) Q. Did you copy any of your material from Dr. Eisenschiml's two books in question?

A. Well, I did, the ones I brought out here. I
259 (p. 147) copied O'Beirne quote, and I made use of, without directly copying, Dr. Eisenschiml's timetable. I believe there are two or three others, as the testimony has shown. • • •

262 (p. 150) I have been a full time professional writer for about sixteen years.

263 (p. 151) I read Eisenschiml's books six years prior to my writing of "America's Greatest Unsolved Murder". As I wrote this I consulted his books, but not
264 (p. 152) with great frequency, I guess. I regarded Dr. Eisenschiml as the greatest authority on the Lincoln assassination. He is the authority. I never consciously copied him.

265 (p. 153) I first read everything available on the subject, perhaps twelve or fifteen books a day, and finally out of my mind or subconscious will shape the form in which I want to write my story. As I work it is necessary to check dates, spellings and items like that. But I know from this absorption pretty well what I am going to write. Here are two notes in connection with the True story, which I found.

266 (p. 154) (Marked Defendant's Exhibit 5 and 6.)

267-268 (p. 155-156) (Mr. Martineau reads from "The Devil's Errand Boy". . . . "Mr. Otto Eisenschiml . . ., the outstanding authority on Abraham Lincoln's death, has devoted a lifetime of intensive research on the subject. His two books . . . are packed with his own sensational discoveries . . .")

268-269 (p. 156-157) In my manuscript of "America's Greatest Unsolved Murder" I mentioned Dr. Eisenschiml as follows: "Dr. Eisenschiml, probably the

world's leading authority on the mysteries of the
270 (p. 158) Lincoln assassination, has in one curt sentence treated Stanton's story to the respect it deserves. He writes, 'It would be exceedingly interesting to have the name of the bell-ringer who was so busy with other orders that he had the audacity to incur the ire of the all-powerful Secretary of War by postponing the repairs on what was then perhaps the most important door bell in Washington.'" This was crossed out by True. The manuscript was cut from about 40,000
271 (p. 159) words to about 25,000. I did not know his [Eisenschiml's] name had been cut out until I saw the printed copy.

I intended to present the True article as a
272 (p. 160) popularized piece of honest history. I was trying to stimulate interest in this subject. I am not a member of the Civil War Round Table. I was invited once to make a talk there, but I never did.
273 (p. 161) This was following the publication of "The Spy Who Saved the Union".

274 (p. 162) *Cross Examination of Mr. Millard*
By Mr. Gertz.

The books in this office are most of the pertinent ones I had with respect to the subject matter of the article. These were the only ones I remember having used, either in hunting for something I couldn't find or in actually finding something that was new. "Prince of Players," by Ruggles, was included in the pile by mistake. It is not pertinent.
275 (p. 163) In Sandburg "The War Years": I cannot
276 (p. 164) point out in Volume II what I used in connection with my article. I cannot, without some time, point out one relevant page, one portion of the book, and might not even be able to do it then. • • •
277-278 (p. 165-166) Q. I show you another book from the said group called "Report On the Organization and

Campaigns of the Army of the Potomac," by George B. McClellan, and ask you to examine it (handing to the witness).

Will you point out anything in that book having any relevance or pertinence to the February, 1953 article?

A. Not directly, no.

Q. Or indirect?

A. Indirect, yes, if I point to the life of McClellan himself. The fact that McClellan was part of the faction involved in a controversy, he was associated with the radical element later, or supposed to have been, then I figured part of an understanding of the situation was in going back, rereading correspondence, and the gradual build-up to the break between McClellan and Lincoln.

Q. Is it a fact that McClellan, far from being connected with the radicals was one of the principal opponents of the radicals?

A. Yes, probably. I am talking of accusations, not of —

Q. So that when you said that he was connected with the radicals, the exact opposite was the truth?

A. I said he was said to have been connected with the radicals. I believe that.

Q. Said by whom,

A. That I can't judge. * * *

279 (p. 167) There are duplicate copies of one book.

"The Diary of a Public Man" is a little more directly relevant. The personalities and actions of many characters involved in the assassination are 280 (p. 168) brought out quite clearly. I used it definitely for the members of the Cabinet. Whom? I can't tell off-hand.—I don't think I can pinpoint any particular person here that became directly used. The book deals with the period preceding and following the first inauguration of Lincoln. I don't know if many respectable historians

regard this work as one of fiction. I don't know who the public man of our day is.

284 (p. 172) When you stated that this pile of books was pertinent, I meant to say that it gave me some background material.

285 (p. 173) On J. E. B. Stuart:

"That is one of quite a few books there dealing with the Southern viewpoint of the war.

286 (p. 174) In "Wearing of the Gray", there is nothing specific connected with my article. I can say without looking.

287 (p. 175) The "Statistical Record of the Armies of the U. S." I used a little more directly in checking of statistics. I remember using the chronolized list of battles.

288 (p. 176) I can't remember any direct material. If I did, it was not in the final manuscript.

289 (p. 177) From "The Footprints of Time" I used
290 (p. 178) the dates of the incidents at the time. (p. 178) We have Lincoln's Cabinet here, and I never could remember who was in that Cabinet. I can't tell when Stanton became a member. It was after he had sent Cameron to Russia. Of his assistants I only recall Dana.

292 (p. 180) I cannot remember the relevance of "The Secret Service" by Richardson.

294 (p. 182) The book was actually published before
295 (p. 183) the assassination, I think, (p. 183) but it dealt with earlier assassination rumors.

296 (p. 184) I used this book as very good background material.

297 (p. 185) As to the "Photographic History of the
298 (p. 186) Civil War" in 10 volumes I can't answer at the moment but I suspect I used it.

Regarding Volume IX "Poetry and Eloquence",
300 (p. 188) on p. 128 there is a reference to the days following the assassination.

(Quoting a speech.) It is part of an article on the Southern viewpoint. * * *

301 (p. 189) Q. You say this Southern viewpoint article is by Charles Francis Adams?

A. Yes.

Q. Wasn't he the Northern minister to England during the Civil War?

A. I don't know. He could be. * * *

The Witness: Oh, no. I see—it is a tribute to Lee, and I said Southern viewpoint. I see it is a New England tribute to Lee, the title of the article, so it is not a Southern viewpoint. * * *

303 (p. 191) I was soaking myself in the background.

306 (p. 194) Grant was important in connection with my article, because someone—possibly not Booth—followed Grant and Mrs. Grant, sat at the next table, dogging his footsteps. I believe this was cut out.

307 (p. 195) George Bryan was the author of "The Great American Myth." I don't know if he wrote anything else. I never checked up on its authenticity. I really think he credits Dr. Eisenschiml for some of his material, and doesn't actually present new material. It was
308 (p. 196) simply taken from Eisenschiml, so far as I know. That material was only a small part. I do not know if he got permission from Eisenschiml to use his material. I hoped my article would appear in a por-
309 (p. 197) tion of a book. In that case, I probably would have required my notes and references.

310 (p. 198) Ralph Daigh of True, editorial director, did not tell me that they intended to use my article in book form.

311 (p. 199) My notes were destroyed by myself prior
312 (p. 200) to publication of the article, about one year before. (p. 200) I have all my notes on the July 1947 article, but no others.

313 (p. 201) For my article I used as original source material, (aside from other books), newspapers and
314 (p. 202) papers from the archives, and that could hardly be called original, because I am sure it has been worked over by a great many others.

I believe I read Eisenschiml's book "Why" twice. Once when I got it, and six years later as part of preparation for my article. I don't believe I marked any passages, I am not in that habit.

316 (p. 204) (Millard's copy of Eisenschiml's book "Why was Lincoln Murdered?" marked Defendant Exhibit #1 and Shadow #2)

317 (p. 205) There may have been notes in respect to Eisenschiml's books in the box (which was burned by me).

320 (p. 208) Roughly, I recall it was last summer that I learned of Eisenschiml's claims of infringement.

322 (p. 210) Fawcett forwarded me a note saying "Here is the first beef we received. Will you do something about this guy?"

I don't recall if it was the Mason letter.

The subject was not on my mind since then.

324 (p. 212) It is incorrect that I did considerable research in the Eisenschiml library and in his private files. I did credit Eisenschiml with the source of
325 (p. 213) something which was cut out—one particular item—

326 (p. 214) —"O.E. probably the worlds leading authority on the mysteries of the Lincoln assassination". That is general credit.

327 (p. 215) I had general correspondence with the editor Tom Naughton over the progress of my work. • • •

328 (p. 216) Q. I show you Defendant's Exhibit 2 for identification, being the manuscript of your article, 135 typewritten pages reduced to 119 by pencil, and

329 (p. 217) ask you to examine it (handing it to the witness).

Referring only to the passages in the manuscript which were cut out by the defendant, were any of those cut out passages copied from Dr. Eisenschiml's books?

A. Yes. • • •

(Witness is asked to look at p. 7 of the manuscript, to the passages beginning "What did Ward Lamon know or suspect that he never revealed?")

I have no idea now where I got that material.

(Witness is shown copy of Shadow and is asked if he got it there.) Not consciously, but we have identically the same sentence here.

330 (p. 218) (Witness is shown p. 7 of the manuscript, a sentence beginning "There had been for example the scheme of Confederate scout Thomas N. Conrad to kidnap Lincoln . . ." going to the sentence "Conrad was convinced that no one of his party had betrayed him." I don't know where I got that material.

(Witness is shown pp. 12 and 13 of Shadow and asked if he got it there.)

I am afraid I can't say. I don't know.

330 (p. 218) (Witness is shown p. 8 of the manuscript, "The police and the papers identified the disturber as a drunken lunatic named Thomas Clemens", and is asked where he got it.)

331 (p. 219) I am trying to think, I have a vague feeling

332 (p. 220) that probably is wrong, but something I have been been reading within the last 4 or 5 days—and, I have not opened these books since the time of this . . .

(Witness examines papers.)

This is a false lead, as I suspected.

(Finds where he ran across it—)

333 (p. 221) That is not my original source.

I did not actually get it from that book.

334 (p. 222) I do not know where the material appeared in source form.

(Witness is shown p. 9 of the manuscript, a passage beginning "All was in readiness")

I can't tell you where I got that.

(Witness is shown p. 14, Plaintiff's Exhibit 1, Why, pp. 44, 45; and in Shadow, pp. 362, 363.)

336 (p. 224) It is a possibility that I got the material from the Eisenschiml books, but I would not say a fact,—there are other sources. I think Sandburg.

337 (p. 225) Undoubtedly, I read every page of Sandburg's 4 volumes, including p. XVII of the foreword:

("The liberal researches of O.E. on the closing scenes of Lincoln's life are a distinct contribution; his failure to prove the main implied thesis of his book Why (Little, Brown, 1937) does not invalidate his other work in revealing the melancholy role of the muddle of John F. Parker and of other figures in drab")

I know that Sandburg derived that material from Eisenschiml.

341 (p. 228) When I mentioned during my testimony that I derived certain things from Sandburg, I meant things which Sandburg in turn derived from Eisenschiml.

342 (p. 229) I believe with no exception except in Dr. Eisenschiml's case, did I use anything that I didn't find at least in two and usually in 4 other sources. Whether they credited one another or not was not the point. The only cases not mentioned anywhere else except in Eisenschiml's books were the O'Beirne papers and the use of the Camden and Amboy schedule.

344 (p. 231) My understanding has been, and I am
345 (p. 232) afraid still is, pending change, that any incident of history, which is generally written about by several writers is a fact of history available to all. I never believed that a man can stifle history through having discovered it. If, on the other hand, it is an item like the O'Beirne papers or the Camden and Amboy schedule, it is a particular bit of knowledge, which Eisenschiml got with considerable effort and expense, that until it is generally written into popular history, it is somewhat his property.

347 (p. 234) I shall pick out the Sandburg sources I used, those which do not come with the credit given by Sandburg to Dr. Eisenschiml.

Quote 8, That would not fall under the Eisenschiml credit. My feeling is that Sandburg did not credit Eisenschiml with this.

348 (p. 235) In the case of Quote 13, 14, and 15 regarding the life of Parker, I would guess that probably comes under Dr. Eisenschiml's credit.

349 (p. 236) That is probably true wherever Sandburg used Parker material. It is a fact that nobody, prior to Dr. Eisenschiml, gave the Parker story in detail or used the Parker records.

Quote 21 I would say does not come under
351 (p. 238) that credit in the Sandburg book. In this I may be wrong.

As to Quotes 34 and 34a in reference to Parker, I imagine they fall under the Eisenschiml credit.

352 (p. 239) If they do not, they should. I never heard of its being used prior to Dr. Eisenschiml.

Quote 42, regarding Paine's strength, I would say would not come under Eisenschiml's credit. I would guess that was a little more generally used. That completes the Sandburg references.

It is my understanding that when one or more history books refer to factual material, I have the right to
353 (p. 240) use that material without looking at the original sources. I would say three or more, without any basis.
355 (p. 242) I would say that publication in a newspaper would automatically make it public property.
358 (p. 245) I did not actually see the Richmond Whig.
359 (p. 246) (Witness is asked to look at pages 10 and 11 of his manuscript, Defendant Exhibit #2, to the paragraph, "Did Lincoln Himself Know or Guess His Fate? There is more than a hint that he did. . . ."
360 (p. 247) "And a few days before walking out of the office of Secretary Stanton, Lincoln and his guard Thomas met a heavy stranger.")

I cannot answer where I got that language or material. I have a feeling that there are sources for that, but
361 (p. 248) I can't pin them down.

(Witness is asked to read p. 19 from Plaintiff's Exhibit #2.)

This does not refresh my memory, and I did not necessarily get it there.
362 (p. 249) (Witness is asked to look at p. 17 of the manuscript). I have a sneaking hunch probably that is Eisenschiml's inspiration. I think probably it was.

(Witness is asked to look at p. 32 of the manuscript.)
365 (p. 252) and then to pp. 10 and 11 of Plaintiff's Exhibit #2) I don't recall that I got my material from pp. 10 and 11. This is not a denial.
366 (p. 253) (Witness is asked to look at p. 38 of his
367 (p. 254) manuscript.) That language I would consider my own, but the source—one place, I think is Sandburg.
369 (p. 256) I never looked at any of O'Beirne's papers. I never looked at Mrs. Lincoln's letter to him.

370 (p. 257) (Witness is asked to look at p. 42 of his manuscript.)

371 (p. 258) The thought was undoubtedly inspired by Dr. Eisenschiml.

(The witness is asked to look at p. 57 of his manuscript.)

372 (p. 259) The language is mine. The idea, I think, is an inspiration from Dr. Eisenschiml.

376 (p. 263) (Witness is asked to look at page 58 of his manuscript to this passage:

"It would be exceedingly interesting to know the name of the bellhanger who was so busy with other orders that he had the audacity to incur the ire of the all-powerful Secretary of War by postponing the repair of what was then the most important door bell in Washington.")

377 (p. 263A) That is a direct copy from Dr. Eisenschiml, of course, since I am quoting from him; not only the idea, but the language.

378 (p. 264) I think my understanding was that I would not have to ask Eisenschiml's permission to use that passage.

I did not ask Eisenschiml's permission to use anything from his books.

379 (p. 265) I have felt that a person who makes use of a fact of history in a literary work, use of that fact is not by any means given permission of it as a personal thing. It is my understanding that if Eisenschiml or anyone else used factual material I could use it, and under the terms you are referring to here, without going to the original source.

381 (p. 267) In some cases I used inferences or surmises or conclusions of Dr. Eisenschiml in my article without directly or indirectly quoting or crediting him.

382 (p. 268) I deny very strongly that I used his language. I allowed Dr. Eisenschiml's curiosity to awaken mine, and in many cases I reached the same conclusions.

384 (p. 270) I don't think that in the article as published I take any exceptions to any of Eisenschiml's conclusions or surmises, but I won't make an arbitrary "no" on that.

386 (p. 272) (It is stipulated that Dr. Eisenschiml is the outstanding, leading authority in the world on the assassination of Abraham Lincoln.)

387 (p. 273) I would even add adjectives to it in 1953 that I hadn't thought of in 1947.

388 (p. 274) (Witness is asked to look at page 58 of his manuscript and reads.)

The language, always, is right from me. The idea, I believe, came from Dr. Eisenschiml.

390 (p. 276) (Witness is asked to read from page 77 of his manuscript.) The idea, I think I can positively say was Dr. Eisenschiml's.

391 (p. 277) (Witness is asked to read more from page
392 (p. 278) 77.) I got the language from myself. The idea behind it I rather think is almost an obvious conclusion.

393 (p. 279) I won't accept as a fact that Eisenschiml was the only one to point out that the wires out of Washington were grounded and not cut.

396 (p. 282) (Witness is asked to read from page 88 of the manuscript.)

397 (p. 283) I got that language from me. The material I link in my mind with an investigation. I don't think it came from Eisenschiml. I cannot really recall.

398 (p. 284) After looking at page 81 of Plaintiff's Exhibit I, I am convinced I got much of this from the investigation of the Judiciary Committee of the House in 1867.

(Witness is asked to read from page 80 of his manuscript.) I got that language from myself, and
399 (p. 285) the material from Baker.

(Witness is asked to read from page 98 of Plaintiff's Exhibit I.) This does not change it. I did not get it from Eisenshciml.

(Witness is asked to read from page 80 of his manuscript.)

401 (p. 287) I am trying to think. I can't remember my source on it now. I don't think it was from Dr. Eisenschiml's books. Chapel Point is on the lower peninsula of Maryland somewhere, not too far from Port Tobacco.

402 (p. 288) If you tell me it is not on any map except in Eisenschiml's book, I will probably accept it as a fact.

407 (p. 293) (Witness is asked to read from page 88 of his manuscript.)

408 (p. 294) The language is mine. The use of the wrong picture is Dr. Eisenschiml's discovery. I realize where I got the material and the idea was from Dr. Eisenschiml. (Witness is asked to read from p. 264 of Dep. top)

409 (p. 295) Well, there is a similarity of language.

410 (p. 296) (Witness is asked to read from page 92 of his manuscript.) That language is mine. The material
411 (p. 297) I probably got from Dr. Eisenschiml.

(Witness is asked to read another part of page 92 of his manuscript.) I got that from myself, and
412 (p. 298) the material from Pitman. I don't think I got it from Eisenschiml.

414 (p. 300) (Witness is asked to read from page 98 of his manuscript.) I got that language from myself.

415 (p. 301) As to the material, I am vague, but I would guess Eisenschiml.

(Witness is asked to read from page 100 of the manuscript.) I don't know where I got the mate-

416 (p. 302) rial, I did not get the language from Dr. Eisenschiml. I am not sure whether I got the material from Eisenschiml.

(Witness is asked to read from page 132 of his
417 (p. 303) manuscript.) I got that language from myself. The material came from the archives of the Congressional Globe, I believe.

418 (p. 304) (Witness is asked to read from pages 142 and 143 of Plaintiff's Exhibit #I.)

It does not change my recollection. It just shocks me a little. I did not get the language consciously from Dr. Eisenschiml, whether unconsciously, I could not say.

I see a similarity here more than I will admit on
419 (p. 305) most others. It is not a copy, but there is a similarity there, and a rather shocking one to me.

(Witness is asked to read from pages 132, 133 of his manuscript.)

I got the material from the Congressional Globe and the reports of the Investigating Committee. Whether
420 (p. 306) Eisenschiml inspired my curiosity, I could not say. It is quite possible.

(Witness is asked to read from page 133 of his manuscript.) I got the language from myself. I think the idea was put into my mind by Dr. Eisenschiml.

421 (p. 307) (Witness is asked to read from pages 151 and 152 of Plaintiff's Exhibit #I.) The language is mine. The material I think came from Dr. Eisenschiml.

(Witness is asked to read from page 133 of his
422 (p. 308) manuscript.) I got that language from myself, the idea from Dr. Eisenschiml. The material I found in some published work of Wood.

423 (p. 309) (Witness is asked to read from page 289 of Plaintiff's Exhibit #I, and page 187 of Exhibit #2.)

424 (p. 310) It is obvious that my recollection was wrong. The material came from here. I am not aware that I

ever saw the issues of the Washington Gazette. I am quite sure I did not and that this was very directly derived from Eisenschiml.

425 (p. 311) I was mistaken, but not in regard to the language.

426 (p. 312) I submitted the manuscript with the almost sure knowledge that half of it would be cut out, but not which half.

I never corrected proofs.

427 (p. 313) Tom Naughton, the editor, told me that parts of it were going to be cut out.

428 (p. 314) I got Quote I from Father Chiniqui's book.

429 (p. 315) Quotes 1, 2, 3, are combined on my card. Quotes 2 and 3 were found and seen in Washington in the records of an investigation.

430 (p. 316) I raised quite a storm about the deletion of my references to Dr. Eisenschiml. I talked about it to Tom Naughton well before this suit came up.

432 (p. 318) I don't believe I have any correspondence on that subject.

Quote #7. As I said, it was from Dr. Eisenschiml's reproduction of the time table. I don't know that it is nowhere else in existence.

433 (p. 319) In general terms the time and unpleasantness of the trip was brought out by General Porter.

435 (p. 321) Eisenschiml is the only source for Grant's time of arrival.

I never saw the Macon Daily News of April 26, 1865. My sole knowledge of it came from Eisenschiml's books.

436 (p. 322) This is Quote 28.

I don't know why it did not get the story until April 26. I gathered it was not sent to them.

437 (p. 323) I don't know that the office of the paper had been raided.

I don't believe I saw the Richmond Whig of April 1865.

I never saw the Middletown Whig Press of April 14, '65, but I learned of its contents in connec-
438 (p. 324) tion with the investigation I mentioned before. I believe it was Butler's Committee. I can't give the specific reference.

All I have on my cards is that it was either the archives or the Globe. However, I would not have looked for it as enthusiastically if I had not had Dr. Eisen-
439 (p. 325) schiml's curiosity. It is a very hazy recollection, I am not positive about the Congressional Globe.

I never looked at the Newburgh Journal.

I did see the New York Sun of February 11, 1917,
440 (p. 326) some time in the summer of 1952, in the New York Library. Now I am not going to be as positive that I saw the New York Sun there.

441 (p. 327) Possibly my source was simply Eisenschiml's book.

444 (p. 330) I did see the Washington National Republican of June 8, 1865, to the best of my recollection, in the Library of Congress, I don't know when, but I think back in 1945 or 46.

445 (p. 331) Apparently I did not use anything from the National Republican in my article except what was quoted in Plaintiff's Exhibit #I, on pages 23, 24, 25.

446 (p. 332) I can't remember some of the works in which I saw Mrs. Lincoln openly accused of complicity in the murder.

447 (p. 333) I never saw the original letter from Mrs. Lincoln to O'Beirne.

I never saw the police blotter in Washington relat-
448 (p. 334) ing to the assassination.

I never saw the original of Forbe's statement that
449 (p. 335) he was in the box that night, except in Eisenschiml's books. I saw it there prior to the writing of my article.

I don't think I ever saw the Riddle papers, and I don't know where they are.

452 (p. 337) I can't answer whether I read the Magazine of History of February 1911, until I can find it here. (Quote 26.)

453 (p. 338) I believe I did. I don't remember where. I believe I read it.

456 (p. 341) I am not able to answer whether I read Document #9, House of Representatives, 39th Congress. Eisenschiml was one of my sources. It is not a fact that my sole knowledge came from Eisenschiml's book.

457 (p. 342) L. J. Velasquez was a woman spy. I don't know where I saw her book.

458 (p. 343) I would not have any memory whether the italics appeared in the book. I put mine in for a specific purpose.

459 (p. 344) I have no recollection what else besides what is quoted in Shadow Velasquez says in regard to the assassination. I have no recollection what else she says, I don't know how long a book it is. I don't know where it was published, or when. (Looking it up) It was

460 (p. 345) published in New York in 1890.

I don't remember any chapter headings.

I don't remember with any clarity at all any particular incident, except one of a skirt full of Quinine being smuggled, and another in connection with Baker's arrest

461 (p. 346) of a minister. Now that may not be from the book. That may be from Baker's book.

I find nothing to indicate that I saw the Washington Sunday Gazettes of October 28, and November 3, 1883.

462 (p. 347) It is not a fact that my sole knowledge of their contents is derived from Eisenschiml's books, but I don't where else I saw it. I saw many papers. It is quite possible I am mistaken.

464 (p. 349) I remember that a promise of clemency was held out to Mrs. Surratt, but not the source, except that a statement was made to her daughter. I can't tell you by whom. I have no recollection where I got it. I remember one source was Stefan Lorant.

465 (p. 350) I don't even know the reference. I don't know if Lorant is considered an expert in the field. I
466 (p. 351) don't know if he is simply a collector of photographs.

The only time I have ever seen a copy of Mrs. Lincoln's letter to O'Beirne is in Dr. Eisenschiml's book. It was quoted in Sandburg, but the only place I saw a facsimile . . .

Do I have a bartender Michael Henry? I don't know
467 (p. 352) where I got the references.

468 (p. 353) I don't know that the name of the bartender is mentioned only in the O'Beirne papers.

(Witness is instructed by Mr. Martineau not to answer certain questions.)

469 (p. 354) I believe I got the information that Booth had relatives in Manchester, New Hampshire, from the reports of the Butler investigation, which I saw either in the archives—or in the Congressional Library.

I don't know whether I read the Boston Sun Post of April 11, 1915.

470 (p. 355) I probably did not see it.

471 (p. 356) Apparently the story of what Eckert was doing that night (contained in the Boston Sun Post) is not in the "Great American Myth".

(Quote 45.) I got the exact quote from Dr. Eisen-
472 (p. 357) schiml. The facts, without the quotes are found in other sources.

473 (p. 358) It is not a fact that the story of the men on crutches appears exclusively in the O'Beirne papers, I don't know where else, but I can say definitely that is not a fact. I don't know if I read the Atlantic Monthly for April 1930. (Quote 9.)

475 (p. 359) I know of other accounts of what Stanton did that night. Oldroyd, p. 53.

I don't know yet where else I got the idea that Booth fired his shot at 10:13 P.M. I would doubt it very much that the only place where that hour is given is in the Eisenschiml books.

476 (p. 360) I have no idea whether I read the Baltimore American of 1902.

477 (p. 361) I think in some few cases I found material
478 (p. 362) which I put on the various cards, which actually were not source material for the original manuscript at the time I wrote it.

I tried chiefly to recall what I did the first time, and put down as closely as I could some of the material. I also depended on the affidavit of Dr. Eisenschiml.

I said what I could find that was recalled to my mind by the statements made in the affidavit.

479 (p. 363) I do not recall that anyone at Fawcett's, prior to the publication of my article, asked me about sources or credits. I think it was mentioned that my article should be submitted to noted Lincoln historians.

480 (p. 364) Some one in the office said, "This is what we
482 (p. 366) ought to do." I have no way of knowing what they did.

True has a very loose way of commissioning. If they approve the idea and you write it successfully enough, it is not an order or a commision. It is merely an
483 (p. 367) approval in advance.

485 (p. 369) The reason I destroyed my notes was that after I put in 4 or 5½ months of toil, I decided that the amount of work to do a book would never pay out.

488 (p. 372) Oh, I got some of my material from the Eisenschiml books. It is possible that I was not aware of that.

489 (p. 373) I don't think language.
492 (p. 375) When I said that Eisenschiml's books are packed with his own sensational discoveries, I meant Dr. Eisenschiml is a very fine man and I think everyone should read his books.
494 (p. 377) I did not mean entirely the items in para-
495 (p. 378) graph 20 of his affidavit and subparagraphs A to O, because I don't think some of these items are his discoveries.

I would say items L, (Parker), I, J and G are his discoveries, none other.

497 (p. 380) As to paragraph 19 of Eisenschiml's affi-
499 (p. 382) davit, and subparagraphs A to II, I would say items G, H, I, N, T, U, V, GG, HH, and II.
500 (p. 383) I meant nothing further than a tribute to Dr. Eisenschiml, that he is a great man.
501 (p. 384) When I wrote that he came upon a shocking find, that was an item.

I did not refer to Eisenschiml in the 1953 article be-
502 (p. 385) cause I was cramped for space, and magazines don't run bibliographies.

I do not see any similarity in language between the two Quotes #1.

503 (p. 386) As to language in my Quote 2, I imagine I was born with it.
504 (p. 387) It is not a paraphrase of Eisenschiml's language.

In Quote 3 none of the language is taken from Eisenschiml.

505 (p. 388) My Quote #5 is not taken from Quote 5 of Eisenschiml.

Nor is that of Quote 11.

Nor is that of Quote 12.

506 (p. 389) I am afraid that the words "only three" in both quotes are similar.

As to Quote 13 none of my language came from Eisenschiml's Quote 13, not "profane, coarse and insolent
507 (p. 390) language" as compared to Eisenschiml's "violent, coarse and insolent."

The language of my Quote 14 was not taken from Eisenschiml, including "kicked by a man he was trying to arrest".

I did not take Quote 20 from Eisenschiml.

508 (p. 391) I did not take any of his language in Quote
509 (p. 392) 29, including "rushing out, he quickly wired his paper."

I did not take my language of Quote 34 from Eisenschiml, including "Lizzie was promptly discharged."

I did not take Eisenschiml's language on Quote 34A and Quote 35, except the quotes within the quotation
510 (p. 393) marks.

I did not take "That close O'Beirne came to making the capture then" from Eisenschiml. I have no opinion on whether the language is almost identical. I know how it happens to be similar, because we were speaking
511 (p. 394) of a very small point there, and one is rather limited in the language that can be applied.

I did not take from Eisenschiml my language on
512 (p. 395) Quotes 36, 37, 39.

I do not know whether I found other diaries besides those of Bates and Browning. There was a good deal of language in there; I used only the quotes.

513 (p. 396) My reason for quoting Bates first was to build to a climax. So I would use the more emphatical one further on.

I did not take my language of Quote 40 from Eisenschiml.

There is no explanation why in describing the farm,
514 (p. 397) I used the same items as Eisenschiml.

515 (p. 398) I did not take Eisenschiml's language on Quotes 50, 51. We were both trying to prove the same

point and that was the only statement that applied to it.

516 (p. 399) I did not take Eisenschiml's language on
517 (p. 400) Quotes 52, 55, 56, 57, 58, 59, 60. I don't recall what else Stanton said at that time and place.

I took none of Eisenschiml's language in my Quotes
518 (p. 401) 62 and 64. I have not had the opportunity to find where I got the 10:13 hour.

Referring to Quote 17, I don't know who besides
519 (p. 402) Eisenschiml and myself referred to the fact that Forbes was not called as a witness.

Re Quote 27. I took nothing there from Eisenschiml
520 (p. 403) except the figure 17 (persons).

Re Quote 44. I do not know anyone else except Eisen-
521 (p. 404) schiml and myself who made the observations in that form.

Re Quote 49. I have no idea whether anyone else besides Eisenschiml and myself faced the facts in that way. I rather think they did.

523 (p. 406) Re Quote 52. I don't know at the moment if anyone else besides Eisenschiml and myself made such common sense observations on that point.

Re Quote 58. I have not since found better sources
524 (p. 407) for this Quote.

Re Quote 60. I am still stuck on that item.

525 (p. 408) Quote 61. I certainly saw the ads on p. 60 of Plaintiff's Exhibit #1 in the Washington Evening Star.

I don't remember whether in the same place, or
526 (p. 409) on what page, nor the size of that paper, nor the number of columns per page.

I don't recall what other newspapers were published in Washington at that time.

527 (p. 410) I do recall seeing the playing up of Grant's presence in other places besides Eisenschiml and

myself, but I have no notes on it. It happens I have. Both Oldroyd and Harris commented on it.

Re Quote 65. I do not recall anyone else besides
528 (p. 411) Eisenschiml and myself making that glaringly obvious observation. I have been vainly trying to recall the telegram Baker sent to Eckert. It is not in Baker's book, and I doubt if it is in the Official Records.
529 (p. 412) I consider Carl Sandburg a Lincoln expert,
530 (p. 413) also James G. Randall, Paul H. Buck, Jay Monaghan, Douglas Freeman, T. Harry Williams, Dr.
531 (p. 414) Bullard. I have never seen George Bryan recorded as an expert.
532 (p. 415) At the time I wrote the article I lived in Westwood, New Jersey. It has a nice small library, not a Civil War library, but with some remarkably good books.
533 (p. 416) The library facilities in Saratoga are very good within certain limitations. Has pretty good Civil War material from the southern side. There are no Civil War manuscripts in Sarasota or Tampa, and probably none on Lincoln's assassination.
534 (p. 417) My last trip to Washington was in 1949. I divided my time between the Archives and the Congressional library.
535 (p. 418) I consulted at the archives with a lady, whose name I don't recall. I worked there with David
536 (p. 419) Rankin Barbee at the Library of Congress I worked from the files.
537 (p. 420) I got a good deal of material from the Washington trip. My article was an outgrowth of an earlier story, "The Devil's Errand Boy" the material for which would also be used for the Lincoln field.
538 (p. 421) I did considerable research in Chicago, in the Historical Society.

539 (p. 422) I have a sneaking notion I got the Velasquez book there, but I am not sure.

I also did research in New York's Public Library.

541 (p. 424) I corresponded with Eisenschiml only on one occasion. He wrote me a very nice letter, telling me that the material I had sent him was new to him, and that he hoped I had the curiosity and energy to dig for material.

542 (p. 425) (The letter is marked Plaintiff's Exhibit #5.)

543 (p. 426) I saw Dr. Eisenschiml only on one occasion.

544 (p. 427) I don't recall the date. It took place in his library. I was there no more than 2 hours. I took no

545 (p. 428) notes. I looked at no manuscript or newspaper.

547 (p. 430) I was educated at Canby High School, Canby, Minnesota. I have no academic degree. On the subject of Lincoln and the Civil War. I published "The Spy Who Saved the Union", "The Devil's Errand Boy", "America's Greatest Unsolved Murder" and a large number of minor pieces.

548 (p. 431) One book of mine will be out in July, and

549 (p. 432) I have one unpublished manuscript, a short story on Brady, photographer in the Civil War.

I never made a comparison between Pitman's and Poore's reports on the [Conspiracy] trial in the original testimony. I did in the bound volumes.

I probably knew as a child that there was a mystery about Lincoln's death.

550 (p. 433) I cannot connect it with any particular book or incident.

They asked questions about it twenty-four hours after it happened.

I got the idea that Parker was a key figure from almost

the same time. There was a movie, The Birth of a Nation, in which his part was played up.

551 (p. 434) I recall no source for it.

I got the idea that there were premature reports on Lincoln's death simultaneously from Eisenschiml's book and another. Here again I am badgered by my memory; if it were better, I could recall other sources.

552 (p. 435) My attention was first called to this by one of the books I was reading. I cannot say whether
553 (p. 436) that or Dr. Eisenschiml's alerted me first.

The discrepancy between Grant's Memoirs and his
554 (p. 437) actual doings were, I believe, cued to me by Dr. Eisenschiml.

I saw the significance of Stanton's refusal to let Lincoln have Eckert as a bodyguard the first time I discovered he had asked for it. I don't think I got that from Dr. Eisenschiml.

Let me refresh my recollection whether anyone besides Eisenschiml and myself had pointed it out. Quotes
555 (p. 438) 10 and 11 edge around it, but not directly.
556 (p. 439) I am afraid I have no references that would refresh my memory beyond that point.
556 (p. 439) It was directly Dr. Eisenschiml who made me examine the false statements of Rathbone and Harris.
557 (p. 440) I believe, but I don't recall exactly, that I expressed the idea in my article that Booth apparently was protected. I cannot answer specifically,
558 (p. 441) but the natural inference is that he could only have escaped by the connivance of someone with authority.

Re paragraph 21 of the Eisenschiml affidavit, sub-
559 (p. 442) paragraphs A to J, I recognize only one as historically inaccurate, when I inadvertently typed

Stanton instead of Seward. I made no mystery of Sergeant Dye's testimony.

561 (p. 444) I don't know whether all one could see through that gimlet hole was Lincoln's chair and part of his head, but I see no reason for thinking so. In Harpers Weekly of April 29, 1865 it is stated that the hole "was sufficiently large to give his eye a wide range."

562 (p. 445) I believe that specific statement is made in "The Great American Myth", that in many reports, possibly in newspapers, it was said the assassin could not possibly have been Booth. I could not recall any other specific one.

563 (p. 446) I don't know that Payne did not know the way to Surrattsville.

On the face of it, I know no other place where "the gin-soaked prostitute" was mentioned as being under suspicion.

564 (p. 447) I used it for dramatic effect rather than historical accuracy.

It is a generally accepted fact that the Radicals, and Stanton in particular, stood to gain by Lincoln's death. It also was the subject of a book "Lincoln and the Radicals".

565 (p. 448) I don't recall whether it has an acknowledgment to Eisenschiml. The argument was the cause of the impeachment of Johnson. Innumerable quotations could be found on that score.

I would not know the number of magazine articles on the assassination between 1865 and 1939. I made an attempt to read all I could locate.

566 (p. 449) I can't recall specifically if any of them gave the same surmises and conclusions that Eisenschiml gave in his books. I would be inclined to say yes.

567 (p. 450) I refer to Gleason's piece, for example. I

believe Crook lashed back at some things, if I am not mistaken.

568 (p. 451) I don't recall stating in my affidavit that all statements were "checked and double checked". The full context is "There is not one statement contained in my article which has not been checked and double checked through every available source."

I meant that I made every effort to find the source.

569 (p. 452) I did not look at secondary works where primary sources were available. I believe I could say without error that the only statements I did accept without being able to at least prove the existence of primary sources were a couple I took from Eisenschiml, because I simply wouldn't think of questioning his veracity on any of this matter.

But in every other case I am positive that I determined that sources existed even though they might not have been available to me at the moment.

I knew that police records existed at one time. Where they are now, I have no idea. I made no effort to

570 (p. 453) check the original police records, I simply relied on Eisenschiml.

I seemed to have missed the footnotes mentioning the O'Beirne papers. I had placed most of the statements therein as also being available through other sources.

Redirect Examination of Mr. Millard
by Mr. Martineau.

This array is books is 10% or less of my library on the Civil War period.

571 (p. 454) Many of them were bought after I had written the two pieces we talked about, but I didn't begin to buy the books with those articles in mind. The

acquisition of my library was the result of my interest in that period.

572 (p. 455) I consulted other books also in connection with the article in controversy here, and took notes from them.

573 (p. 456) I have been a free-lance writer for the last 16 years. I did not go to college for lack of funds. I went to work within a month or so out of High School, clerking in a grocery store.

574 (p. 457) Some time after I went into the advertising business in Minneapolis. I was advertising manager of two small trade journals. I was then about 19 years old. During that time I sold my first article.

I did copyrighting in connection with that advertising work.

575 (p. 458) Then I was a space buyer in St. Paul. In 1931 I was laid off. That was two days after my marriage. I then sold and serviced oil burners.

576 (p. 459) After that brief period I made my first important sale of a piece of writing.

I then moved to Mount Morris, Illinois, where I was editor of a magazine, selling an occasional story. I practically wrote the whole magazine, leaving me little

577 (p. 469) time for outside writing.

After 9 months the magazine was moved to Chicago where I stayed 6 or 6½ years. I went into writing in earnest and also opened an advertising and public relations office.

578 (p. 461) I wrote mostly trade articles. After some 5 years I plunged into free-lance writing, which I have done ever since, from 1936 on.

579 (p. 462) I have sold at least 1000 stories. I have two in the current issue of Blue.

581 (p. 464) I ran across a piece of evidence in my favor. In "The Devil's Errand Boy" I quote Baker,

"He asked where he was captured". I said 'near Port Conway'. As near as I can determine in neither of his books does Eisenschiml include that portion of the remarks. I got it out of the Congressional Record.

582 (p. 465) I am sure I picked items G, I, J, and L from paragraph 20 of Eisenschiml's affidavit, and they are the only ones. I may be wrong.

583 (p. 466) I feel that these items originated with him, so far as I know. He was the first person, to my knowledge, who ever called my attention to them.

I did not feel I was poaching on his reserves. Quite the opposite, because my understanding has been that Dr. Eisenschiml wrote his books for the express purpose of arousing curiosity.

584 (p. 467) I felt that he was hoping that such would occur in the case of every reader.

589 (p. 467) Re Paragraph 19 of Eisenschiml's affidavit, paragraphs G, H, I, N, T, U, V, X, GG and HH.

585 (p. 468) I disagree very strongly that they were material presented for the first time in his two books, and that they were copied, plagiarized, infringed and pirated by the defendant.

Item G. I could only say that he was the first to call it to my attention. I used that in my work. I also called attention to that fact. In doing so I did not feel that

586 (p. 469) I was poaching on Eisenschiml's preserves.

When I called attention to Grant's evasiveness, I felt that I was merely mentioning a historical fact.

587 (p. 470) Re Sub-paragraph H, "Proof that Grant's excuse for leaving Washington was unfounded." Dr. Eisenschiml was the first to call my attention to it.

In my cross-examination I quoted some authority that Mrs. Grant feared being insulted by Mrs. Lincoln.

588 (p. 471) I think that would be part of an excuse not to go to the theater party. I think deeper than that

would be his own position of either having to defend his wife against his commander-in-chief's wife or stand by like an ass while his wife is insulted.

589 (p. 472) Re Item I, the time table of the Camden and Amboy R.R., I stated Dr. Eisenschiml was the first person who discovered and reproduced the actual table. It is the first one I saw.

590 (p. 473) In telling about it I felt that I was stating a historical fact, and was not stealing something from Dr. Eisenschiml.

I did not feel that he was the only person who had the right to say that that train left at 2:58 P.M.

I got the impression, when reading his books, that he would want other scholars to report the same historical facts.

Re Subparagraph N. "The contradictory and evasive statements of Major Rathbone and Miss Harris." I

591 (p. 474) stated that that was the first I had ever been aware of that. I took it as historical facts.

Re Subparagraph T. "The willful changes made in the official records of the trial, made by Pitman and Burnett." I think that including the word "willful" he is the first historian who called attention to those changes.

593 (p. 476) He cited the original manuscript in the archives and the original manuscript of Pitman's record, also Pitman's printed book. I didn't look at the actual manuscript, I did not try to get at it. I took Dr. Eisenschiml's word for it.

I regarded it as a statement of a historical fact by a reliable historian, documented by an actual photo-

594 (p. 477) graph. I have not see the original shorthand notes of the Pitman record.

Re Subparagraph U, "the fact that the pursuit of

595 (p. 478) Booth was not undertaken in the right direction, and that the War Department neglected to follow

Booth's trail after Fletcher's report."

As to the first part, Dr. Eisenschiml is the first to call that to my attention. The second part is not an original. It is a fact of history plus his inferences on facts already known.

596 (p. 479) When you say that Dr. Eisenschiml was
597 (p. 480) the first person to say, "This is not chasing him [Booth] in the right direction," it makes it sound much simpler, because the records are so damnably mixed up, and there was such a mass of orders and counter-orders, that it takes a very shrewd mind to cut through that maze and arrive at the obvious conclusions.

Eisenschiml had the shrewd and analytical mind to penetrate that maze.

I understood he was stating a historical fact plus his excellent inference from it. I would say that every scholar would be forced to use it or write what is now known to be an untrue piece of history.

Re item V. "The fact that the blotter of the Tenth
598 (p. 481) Street police station in Washington contained the names of witnesses and their statements". I have never seen the blotter.

599 (p. 482) No one knew, prior to Dr. Eisenschiml, that the blotter contained that. Dr. Eisenschiml was the first to look at it.

Re sub-paragraph X "Stanton's delay in broadcasting Booth's name until too late to reach the morning edition", the fact was known. Eisenschiml was the first to put an interpretation on it.

601 (p. 484) He was the first person, in my opinion, to lay the delay to intent rather than confusion; that there was method to the alleged seeming madness, the first to draw that inference from these historical facts.

602 (p. 485) It would become a historical fact. Re sub-paragraph GG, "That the 'tobacco barn' in Garrett's

farm had more than one door". Dr. Eisenschiml was the first to call it to my attention. It was known many years before he wrote his books.

603 (p. 486) I saw the Confederate Veteran story. I don't recall when. I was trying to think whether I was persuaded to read it by having found out what was in there through Eisenschiml's books, or whether I came upon it in running down everything pertaining to the subject.

604 (p. 487) It is quite possible that I was alerted to that fact by reading Eisenschiml's book.

606 (p. 489) Re sub-paragraph HH. "Lafayette Baker's determination to catch Booth, or substitute another body for it".

607 (p. 490) Eisenschiml was the first to call it to my attention. I had probably never heard about this amazing fact until I read it in Eisenschiml. He told me about it.

608 (p. 491) I cannot recall whether nothing is italicized in the original Velasquez. I have only the word of Eisenschiml and Mr. Gertz on that, but I am willing to accept it.

609 (p. 492) In all these matters on which I have been questioned, and which I said were Eisenschiml's discoveries, I meant that he was the first to call them to my attention. And then I either verified it or else took his word for it. But I did not copy his language.

I was pretty tired last night after having been on
610 (p. 493) the witness stand about 7½ hours.

611 (p. 494) I saw the Velasquez book the last time in either 1945 or 1946.

612 (p. 495) I said this morning that when I came up here to testify, I used the Eisenschiml affidavit to reorient myself, to see what he was claiming. I had
613 (p. 496) to push back into my mind that whole mess

when I did that manuscript. I could not afford it,
614 (p. 497) so I may not have even, this second time, used the same sources that I did originally. That I can't remember.

Mr. Gertz asked about these cards. They were also done in connection with just being able to testify more rapidly and efficiently in regard to these 66 items.

There are 66 cards, plus a few additional ones.

615 (p. 498) I figured if I found one or two authorities on which I could rely, that I had sufficient. I think I put some material on those cards which was not source material for my article. It directly pertains to the items, but was not necessarily original source material.

616 (p. 499) I can see no objection to having those cards marked and have Mr. Gertz examine them.

617 (p. 500) (Marked Defense Exhibit #7.)

(Mr. Martineau stated: Exhibit #7 is a packet of cards prepared by Mr. Millard so that he could readily refer to first his source material on the 66 items in dispute, and the cards corresponding to Mr. Millard also contain some material which he had not heretofore used as source material for his article.)

618 (p. 501) I may or not be able to pick out those cards which were not used as source material. I did not actually use the Philadelphia Inquirer transcript, I did not know it existed. I included it, but only as additional source. I don't think that Private O'Reilly book was used. I am not sure.

619 (p. 502) If I had not prepared these cards, I would have had to run to the library for every question asked me.

620 (p. 503) I made no attempt to memorize the language or form of expressions used in any of the books! In case of a telegram or letter I made notes.

621 (p. 504) I should say I did not consciously or unconsciously memorize Eisenschiml's language.

Re Quote #35, the Cox business, the only place
622 (p. 505) where I saw the exact words from the O'Beirne diary were the passage in Eisenschiml. I have never seen the diary, but the fact, as distinguished from the expressions, was stated by many other authorities.

I feel that Eisenschiml was stating a historical
623 (p. 506) fact. Yesterday I said I was shocked at some material in your manuscript when my attention was called to p. 143 of Plaintiff's Exhibit #1.
624 (p. 507) Now I can't see why I was shocked. I don't even see anything close at all.
626 (p. 509) My memory is that the facts are in Baker's book.

It is a preposterous statement to say that Dr. Eisenschiml is the first man who advanced the idea that there was a mystery about Lincoln's death. There was a Congressional investigation.

627 (p. 510) Further, it was bruited about that a lot of higher-ups might have been implicated. It is this which led almost directly to Johnson's impeachment.
628 (p. 511) I think Dr. Eisenschiml himself would not claim that he solved the mystery of Stanton's possible implication. He is very careful about that. He only pointed out the way . . .

Chapel Point is referred to in Baker and Homer Bates.

630 (p. 513) I did not prepare any cards to cover those parts of my manuscript which were cut out.
631 (p. 514) My attention was called by Mr. Gertz to p. 70 of my manuscript, the sentence beginning with "What did Ward Lamon know that he never revealed?" Then he called my attention to p. 21 of Plaintiff's Exhibit

#2. This is where I made my remark that I was shocked, but maybe not. Anyway, the first sentence is "What
632 (p. 515) did Lamon know that he never told?"
I did not copy the language.

Re-Cross Examination of Mr. Millard
By Mr. Gertz.

I had first had any conversation with Mr. Martineau with respect to my testimony on the day the hearing opened. It lasted not over 3 hours at the most.
633 (p. 516) I had a few conversations with Mr. Flannery, none of very long duration, for a total of probably two hours. I had no talks with any attorneys from the time of the complaint to the time of the hearing.
634 (p. 517) The substance of my affidavit was taken from a letter I wrote to Mr. Flannery, which he returned, substantially as I had written it, in the form of an affidavit. Yes, I have written at least 1,000 articles and stories in the last 16 years.

From the standpoint of a writer, I allow myself
635 (p. 518) a lot of time for research. From the standpoint of Dr. Eisenschiml, very little time.

I don't know exactly how many articles I wrote since 1951.

I did not write to anyone at all for permission to use any material in connection with my article.
637 (p. 520) I knew when I wrote my article that the Eisenschiml books were copyrighted. I understood copyright to mean two different things. In the field of history, a legal protection to a writer against copying his words and expressions, not facts which were in existence before him, and over which he had no control.

I thought at the time I wrote the article that I had the right to use any factual material found in copyrighted books without looking at the original sources.

(Hassan's Stranger's Pocket Compass, marked Plaintiff's Exhibit #6.)

638 (p. 521) There is nothing whatever in this Exhibit #6 which tells what the schedule of the Camden and Amboy Railroad was in 1865.

642 (p. 525) The pile of books, magazines and newspapers on the ledge in this office are some of the publications I used when preparing myself to write the story. Many of them are background material.

644 (p. 527) In fact, I doubt if there are a dozen books
645 (p. 528) here that are directly pertained to the points of the assassination brought out here, but the assassination was only a climax.

I am sure I didn't say that prior to Eisenschiml's books many publications linked Stanton to the assassination. Higher-ups, yes.

646 (p. 529) Many newspapers did, the Congressional Globe and the Butler Committee. Vice President Johnson was about as high as you could go in the government.

647 (p. 530) There was a considerable split of opinion as to whether Dr. Eisenschiml was a research genius or a man who had gone off the deep end and was trying to document a weird idea.

I would say many historians regarded his writings as novel and original.

648 (p. 531) I don't believe I would consider Eisen-
649 (p. 532) schiml's books as unique, so far as the assassination is concerned.

In addition to the 66 or 67 items in Exhibit
650 (p. 533) and the items in paragraphs 19 and 20 of the Eisenschiml affidavit, there are other historical facts common to my article, to the Eisenschiml books and others.

In all instances I attempted to examine original sources.

In many instances I was unable to without taking a lot of expensive trips to the places where that source material was.

I did not just sit down and take Eisenschiml's books
651 (p. 534) and appropriate this without running down any original sources. I spent several months in running them down, wherever possible.

To me a historical fact is an incident that occurred, a person who lived, or publication of a newspaper, a pamphlet, a magazine, the fact of a book.

I include historical facts, inferences or surmises
652 (p. 535) drawn from factual material, because most history begins as inference, and without it there would be no curiosity, no research. But do not include the language in which they are set forth.

DEPOSITION OF RALPH DAIGH.

Direct Examination by Mr. Gertz

664 (p. 3) My name is Ralph Foster Daigh.

I live at 1405 Pelham Manor, New York.

I am editorial director and vice-president of the Fawcett Publications, Inc.

I have been vice-president for about four years and editorial director for about 16 years.

I have complete responsibility for editorial material for Fawcett Publications, including the magazine True.

665 (p. 4) My duties at the time of issuing the February 1953 issue were not different.

To my knowledge I did not read Millard's article prior to publication and had nothing to do with it being commissioned.

666 (p. 5) The first time I was aware of the manuscript was when I read the comments and the synopsis of our readers.

667 (p. 6) (Synopsis and reader's comments are made Plaintiff's Exhibit 3, 3/26/54.)

669 (p. 8) Millard's manuscript was edited and cut by our managing editor, Thomas J. Naughton.

670 (p. 9) The other two comments are by Charles Barnard and Ken W. Purdy.

671 (p. 10) I don't know with certainty whether Millard submitted his article without a commission.

672 (p. 11) I don't know what, if anything, was done by anyone connected with Fawcett as to checking sources and credits on Millard's article.

673 (p. 12) Mr. Naughton and possibly Mr. Purdy would know.

I had not read Eisenschiml's two books before pub-
674 (p. 13) lication of Millard's article. I do not know if anyone here took steps to determine whether Millard had taken anything from Eisenschiml's books. Mr. Naughton, and possibly Mr. Purdy would know.

Mr. Naughton deleted the reference to Mr. Eisenschiml,

675 (p. 14) No one else to my knowledge.

I discussed this deletion with Mr. Naughton and Mr. Millard after receiving your letter.

I do not know if Mr. Naughton discussed it with Millard.

677 (p. 16) I have personally sort of compared Millard's article with Eisenschiml's books,

678 (p. 17) a few pages, and could find no valid reason for the complaint.

679 (p. 18) After publication of the article I received a letter from a friend of Eisenschiml. I think his name was Mason. I replied to it.

Martineau: We will stipulate that he replied and that a photostatic copy of the reply is attached to Eisenschiml's affidavit as par. 24.

680 (p. 19) Mr. Gertz: I call your attention to paragraph 2 of that letter, reading:

"You are probably right that Dr. Eisenschiml should have been credited in the piece that Mr. Joseph Millard did on Lincoln's death."

To which credit did you have reference?

Witness: To the fact that Eisenschiml's name had been mentioned in the unedited version, and that that
681 (p. 20) mention had been removed.

I only had reference to the part that contained Eisenschiml's name.

683 (p. 22) My recollection is that I showed Mr. Mason's letter to Millard. He told me about the deletion of Eisenschiml's name. He also saw no basis for any
684 (p. 23) complaint by Eisenschiml, and expressed regret that his name had been eliminated.

He also told me that he had seen Dr. Eisenschiml in his library and spoke glowingly of the conversation with him and that he was permitted to inspect the library and spend some time there.

685 (p. 24) I have no recollection as to his mentioning Eisenschiml's private files in which he had done research, nor why I chose the words "private files". He characterized Eisenschiml as "cooperative".

686 (p. 25) To my knowledge he did not request permission of Dr. Eisenschiml to use any of his material.

Yes, my conversation with Millard was the source of what I wrote in paragraph 3 of my letter to Mr. Mason.

687 (p. 26) Millard mentioned to me his hope of having the entire manuscript published in book form. I don't know whether he discussed this with anyone else connected with True.

There never was to my knowledge, a discussion
688 (p. 27) on this between myself and anyone connected with Fawcett Publications.

(On the following questions there was no answer given by witness.)

Q. What was the average circulation of True for January 1953?

Q. True for March 1952?

689 (p. 28) Q. For the year 1953?

Q. How many words are there in the Millard Article?

Q. How long was the original manuscript?

As to what kind of cover goes on the magazine I have a voice, and so has the editor and the art director.

On the February 1953 issue it was worked out between myself and Naughton. I had the responsibility.

690 (p. 29) The Millard article was the only one in that issue we described as a book length feature.

(Copy of True of January 1954 was marked Plaintiff's Exhibit #4, 3/26/54.)

691 (p. 30) That cover is a form which has been used for three consecutive years on the January issue and

692 (p. 31) is composed of the covers of the preceding 12 or 11 issues.

That at the top of this cover was the February 1953 issue I noticed for the first time. These covers are arranged in a color pattern for the best eye-appeal.

693 (p. 32) I do not know why the references to Carl Sandberg were not omitted.

694 (p. 33) *Cross-Examination of Mr. Daigh by Mr. Martineau.*

696 (p. 35) In magazines of the True type, it is not customary to furnish documentation as in an historical work.

The number of manuscripts purchased by Fawcett's in 1952 and 1953 would run into the thousands.

The reason for printing the headline "America's Greatest Unsolved Murder" on the cover is this: We hire research people to determine for us what makes people buy magazines, and we found that an unsolved murder has better than average salability.

697 (p. 36) You will notice that there is no mention of Lincoln; the public is not as interested in a story of Lincoln as they are in an unsolved murder.

Redirect Examination of Mr. Daigh
by Mr. Gertz

Gave title to article so that it would sell.

698 (p. 37) It is our policy to the best of our ability and to the limits of practical practice to check everything for accuracy that appears in True.

699 (p. 38) We purchased Millard's manuscript on February 2, 1952.

The material started to go to the printer about three to four months before it went on the presses.

700 (p. 39) We went to the presses in December 1952.

702 (p. 41) Mr. Gertz:

Q. Do you have any department at Fawcett's which determines prior to publication whether there are any copyright infringements in an article or manuscript?

703 (p. 42) Witness: We have a wonderful machine for that called an editor.

It is part of his function, but I must add that even more important is the reliability, honesty, known integrity of the contributor.

703 (p. 42) Mr. Gertz: Because you had published Millard's articles before, you assumed that there was no infringement?

Witness: Not only had we published them, but other publishers had, and to my knowledge there never has been a legitimate complaint.

704 (p. 43) The defendant relies on the warrantee of the author as to originality of the article.

705 (p. 44) In cases of dispute or intelligent doubt, we certainly do make a check, but it would be physically impossible to examine everything printed.

710-711 • • •

712

INTERROGATORIES PROPOUNDED BY PLAINTIFF AND DEFENDANT TO MRS. JOSEPH J. MILLARD

(Filed Nov 22 1954)

The plaintiff and defendant above named hereby request, in accordance with Rule 31 of the Federal Rules of Civil Procedure, that you make answer to the following interrogatories before Mary Secor, a Notary Public at large in and for the State of Florida:

Direct Interrogatories Propounded by the Defendant, Fawcett Publications, Inc.

1. What is your full name and present address?

2. Are you the wife of Joseph J. Millard, the author of an article entitled "The World's Greatest Unsolved Murder"?

3. If the answer to interrogatory 2 is "Yes", please answer the following:

4. When were you married?

5. How many children do you have?

6. When was "The World's Greatest Unsolved Murder" written by your husband?

713 7. Where did your husband write said article?

8. What state and city were you living in at the

time your husband wrote said article?

9. Did you own the house that you were living in at that time?

10. How long did you live in that city and state?

11. Where did you move from that city and state and when did you move?

12. If you owned your house in that city and state, did you sell it at the time you moved?

13. If your answer to 12 above is "Yes", did you store any of the personal property, furniture and other miscellaneous property that you removed from your house when it was sold?

14. If your answer to 12 above is "Yes", did you destroy any of the personal belongings, furniture or furnishings that were removed from the house that you sold?

15. If the answer to 14 above is "Yes", what was destroyed? Please describe in as much detail as possible the items destroyed.

16. If the answer to 14 above is "Yes", please state how the material in question was destroyed.

17. Did you have a conversation with your husband, Joseph J. Millard, concerning the property to be removed to Florida, property to be destroyed, and the property to be placed in storage?

18. If your answer to 17 above is "Yes", please state the place and time of that conversation.

714 19. If the answer to 17 above is "Yes", please state whether or not you said to your husband during the course of that conversation that you were glad to see him give up writing historical pieces.

20. If your answer to 14 above is "Yes", please state whether or not it was agreeable with you that your husband destroy the material that was destroyed.

715

CROSS-INTERROGATORIES PROPOUNDED BY THE PLAINTIFF, OTTO EISENSCHIML, TO MRS. JOSEPH J. MILLARD (WITHOUT PREJUDICE TO OBJECTIONS TO DIRECT INTERROGATORIES

(Filed Nov 22 1954)

1. Were you ever present at any meetings between your husband and Thomas J. Naughton at any time prior to the publication of your husband's article in the February 1953 issue of True?

2. If the answer to cross-interrogatory 1 is "Yes", please answer the following:

3. When and where did such conversations or conversation take place and who were present?

4. What was said by each person present at each of the said times and places?

5. Were you ever present at any meetings between your husband and Ralph Daigh at any time prior to the publication of your husband's article in the February 1953 issue of True?

6. If the answer to cross-interrogatory 5 is "Yes", please answer the following:

7. When and where did such conversations or conversation take place and who were present?

8. What was said by each person present at each of the said times and places?

716 9. Were you ever present at any meetings between your husband and Ken Purdy at any time prior to the publication of your husband's article in the February 1953 issue of True?

10. If the answer to cross-interrogatory 9 is "Yes", please answer the following:

11. When and where did such conversations or conversation take place and who were present?

12. What was said by each person present at each of the said times and places?

13. If you or your husband destroyed any of your personal belongings when you moved from the city in which he wrote the article published in the February, 1953 issue of "True", when did you destroy them?

14. Did you make an inventory of all or part of the belongings destroyed by you or him?

15. If the answer to cross-interrogatory 14 is "Yes", where is that inventory?

16. Is it possible for you to compare, as to size or bulk, the belongings destroyed with the belongings not destroyed?

17. If the answer to cross-interrogatory 16 is "Yes", please make such comparison—state the size of the belongings destroyed as contrasted with the belongings not destroyed.

18. At the time you destroyed the said belongings, were there any public warehouses or storage facilities available in your community?

19. What was the bulk or volume of typed or handwritten material that was destroyed?

20. How did it compare in bulk, size or volume with the books or other printed material that was not destroyed?

21. Have you discussed these interrogatories and cross-interrogatories with your husband?

717 22. With the attorney or attorneys for "True" or Fawcett Publications, Inc.?

23. Have you discussed your husband's deposition with him?

24. As to the typed or handwritten material that was destroyed, was it prepared, arranged or filed in any systematic fashion?

25. If the answer to cross-interrogatory 24 is "Yes", describe in detail the manner in which the said material was prepared, arranged or filed?

718

DEPOSITION OF MRS. JOSEPH J. MILLARD ON WRITTEN INTERROGATORIES AND CROSS-INTERROGATORIES

(Filed Dec. 3, 1954)

The examination of Mrs. Joseph J. Millard on written interrogatories and cross-interrogatories, in a certain cause now pending in the United States District Court For The Northern District of Illinois, Eastern Division, wherein Otto Eisenschiml is Plaintiff and Fawcett Publications, Inc., a Delaware corporation, is Defendant, was held in Room 316, Palmer First National Bank and Trust Company Building, Sarasota, Florida, on Monday, the 29th day of November, A. D. 1954, beginning at 10:00 o'clock A. M., at which examination there was present the witness, Mrs. Joseph J. Millard, and the undersigned Notary Public, Mary Secor.

The witness, Mrs. Joseph J. Millard, being first duly sworn and put on oath, answered the interrogatories and cross-interrogatories propounded by the parties to this cause as follows:

ANSWERS TO INTERROGATORIES

Answer in interrogatory No. 1: Amy Leone Harrington Millard. 2462 Belvoir Boulevard, Sarasota, Florida.

719 Answer to interrogatory No. 2: Yes.

Answer to interrogatory No. 3: .....

Answer to interrogatory No. 4: February 14, 1931.

Answer to interrogatory No. 5: One.

Answer to interrogatory No. 6: I can't say.

Answer to interrogatory No. 7: As nearly as I can recall part of it in Westwood, New Jersey, and part of it in Sarasota, Florida.

Answer to interrogatory No. 8: Well, if it was written at this period when I say it was I was in Westwood, New Jersey and Sarasota.

Answer to interrogatory No. 9: The house we lived in in Westwood, New Jersey, yes.

Answer to interrogatory No. 10: Well never for a consecutive time. We were back and forth from about 1941 until we sold the house.

Answer to interrogatory No. 11: We moved to Quakertown, Pennsylvania. A farm, and I believe that would be 1943.

Answer to interrogatory No. 12: Yes.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: I don't recall that I personally did. No.

Answer to interrogatory No. 15: I destroyed nothing personally.

Answer to interrogatory No. 16: .....

Answer to interrogatory No. 17: I presume we discussed putting things in storage and leaving behind anything we didn't want only I don't actually recall any conversations on that line.

720 Answer to interrogatory No. 18: I am afraid I couldn't.

Answer to interrogatory No. 19: I don't recall that remark, no.

Answer to interrogatory No. 20: I'm sorry I don't know that he destroyed any. I presume he did.

ANSWERS TO CROSS-INTERROGATORIES

Answer to cross-interrogatory No. 1: No.

Answer to cross-interrogatory No. 2: .....

Answer to cross-interrogatory No. 3: .....

Answer to cross-interrogatory No. 4: .....

Answer to cross-interrogatory No. 5: No.

Answer to cross-interrogatory No. 6: .....

Answer to cross-interrogatory No. 7: .....

Answer to cross-interrogatory No. 8: .....

Answer to cross-interrogatory No. 9: No.

Answer to cross-interrogatory No. 10: .....

Answer to cross-interrogatory No. 11: .....

Answer to cross-interrogatory No. 12: .....

Answer to cross-interrogatory No. 13: As I recall we did not destroy them. At least I did not.

721 Answer to cross-interrogatory No. 14: No.

Answer to cross-interrogatory No. 15: .....

Answer to cross-interrogatory No. 16: No.

Answer to cross-interrogatory No. 17: .....

Answer to cross-interrogatory No. 18: Well, there are warehouses but as I say I don't recall destroying them. I repeat.

Answer to cross-interrogatory No. 19: That is something I wouldn't know.

Answer to cross-interrogatory No. 20: I wouldn't know.

Answer to cross-interrogatory No. 21: At least I was going to be questioned.

Answer to cross-interrogatory No. 22: No.

Answer to cross-interrogatory No. 23: I wouldn't say I actually discussed it, I have heard him tell parts of it.

Answer to cross-interrogatory No. 24: I would say I wouldn't know.

Answer to cross-interrogatory No. 25: I couldn't.

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722-731 • • •

REPORT OF PROCEEDINGS

Direct Examination of Virginia M. Goldberg by Mr. Elmer Gertz.

("Why Was Lincoln Murdered" received as Plaintiff's Exhibit #1)

("In the Shadow of Lincoln's Death" received as Plaintiff's Exhibit #2)

(True Magazine for February 1953 received as Plaintiff's Exhibit #3)

My name is Virginia M. Goldberg. I live at 4461 North Murray Avenue, Milwaukee. I was employed by Otto Eisenschiml in connection with the gathering of material for the books Exhibits #1 and #2, from about December 1932 to some time in 1940. I am a niece of Otto Eisenschiml, and was employed as his secretary, research-worker, stenographer, librarian, and took care of other people needed in the work on the books. I received at the beginning 30¢ an hour, and worked up to about $25.00 a week.

There were a number of other employees. One Charles Tyng worked in Washington, studying newspapers and working on a timetable. There was a Dr. Helene Lemberger, who did research work in the library.

There were Sally Owens and Sally Holmes, a girl in Philadelphia and one in Vermont. There were a number of girls from Eisenschiml's office, and one Vivian Bolotin.

I worked at the University of Chicago, at Newberry Library, the Chicago Historical Society, the Public Library. I organized the filing system, documents, pictures, newspapers, etc. I assigned others to certain projects, wrote letters, got permission to use material.

13 In most instances I had written reports from the people who were researching. • • •

20 I sent orders in for newspapers, letters, pictures,
21 to autograph collectors, and to houses where we pur-
22 chased documents. Prices of newspapers ranged from one to five dollars, some $20.00. We bought pictures.
23 Then we purchased the O'Beirne papers, which cost about $1,000.00.

24 We took trips, to Washington in 1933, to the War
25 Department, with my mother, found a file of the
26 evidence taken at the Conspiracy Trial. I think there was a second trip.

At the Police Department we saw the blotter, and
27 we went to Ford's Theater. We followed the Booth
28 [escape] route. (An album of photographs is shown and marked Pl. Exh. #4.) Most of these pictures were taken on this trip by Otto Eisenschiml, while I was present.

29 We went to Cleveland, for the Riddle papers. We
31 read and abstracted them.

32 Mr. Eisenschiml paid all expenses. In Pittsburg we went to see Mr. Doster, whose father was an attorney in the Conspiracy Trial. We read and took with us some of his papers.

33 Then we went to see Mrs. Peddicord in connection with a lock of hair from Booth; then to Brooklyn to see a man who had a collection of theatrical material.
34 Then there was a trip to Lansing, Michigan, to see a
35 son of Lt. Baker, and to Springfield, Illinois, and to Kansas City.

Cross Examination of Virgini Goldberg by Mr. J. B. Martineau.

36-39 I would prepare notes for Eisenschiml to take along. I have no notes in my possession.

41 I cannot approximate the total sum Eisenschiml paid for the research and other work.

45 The file in the War and Navy Building was about 3 feet tall, 12 inches wide. Everything was in disorder.

46 I filled at least four note books with notes.

Re-direct Examination of Virginia Goldberg by Mr. Gertz.

50 The photostats of documents we gathered completely
52 filled a filing cabinet drawer. We had pamphlets
53 photostated at fifty cents a sheet. (A ledger of Eisen-
57 schiml expenses is marked Plaintiff's Exhibit #5.) I think the figures in there are correct.

Re-cross Examination of Virginia Goldberg by Mr. Martineau.

60 The ledger was prepared by accountants. It refreshed my recollection.

63 (Plaintiff's Exhibit #6 received without objection —a request by plaintiff for admissions.)

65 (Plaintiff's Exhibit #7 received without objection— affidavit in support of plaintiff's motion for summary judgment.)

68 (Plaintiff's Exhibit #6A identified—defendant's partial response.)

71 (Plaintiff's Exhibit #8 is received without objection.)

73 (Plaintiff's Exhibit #8A is identified.)

74 (Plaintiff's Exhibit #9 is received, without objection.)

76 (Plaintiff's Exhibit #9A is identified.)

78 (Plaintiff's Exhibit #10 is received without objection.)

79 (Plaintiff's Exhibit #11 is received without objection.)

80 (Stipulation that the court is to rule on the various requests for admissions and interrogatories.)

82 (Plaintiff's Exhibit #12 is received without objection.)

83 (Plaintiff's Exhibit #13 is received without objection.)

83-84 (Plaintiff objects to certain portions of Daigh depositions.)

85 (Plaintiff's Exhibit #14 is received without objection.)

89 *Direct Examination of Dr. Donald H. Riddle by Mr. Gertz.*

I live at 239 South Bruner Street, Hinsdale, Illinois. I am head of the Division of Social Sciences at the University of Illinois, Chicago Undergraduate Division. My primary field is teaching American history, done for the past six years. I have been a teacher for 32 years.

90 Prior to that I was in the field of New Testament history and literature. This included textual history, studies in the synoptic problem of the Gospels, literature of New Testament, early church history.

It also included comparison of text or language, word for word.

91 It includes the working out of literary relationships so that similarities and differences may be seen.

91-96 I made this kind of comparison between Eisenschiml's books and Millard's article. The same skills are involved in this kind of comparison. I read the books and article, made a comparison of the language, marked similarities. I found 13 identical passages there, from 97 13 to 33 words, in a total of 85 parallelisms.

(Copy of Millard's article on which Dr. Riddle worked is marked Plaintiff's Exhibit #15)

98 (Dr. Riddle's list of identical passages marked Plaintiff's Exhibit #16.)

99 The first identical passage is:

"Crook, do you know, I believe there are men who want to take my life . . . and I have no doubt they will do it."

(24 identical words)

100 Next: "I know one one could do it and escape alive. But if it is to be done, it is impossible to prevent it."

(23 identical words)

101 "I am thinking . . . he would be the kind of man to go with me this evening. May I take him?"

(20 identical words)

"Then I shall take Major Rathbone along . . . But I would much rather have you, Major, since you can break a poker over your arm."

(25 identical words)

"Provost Marshal James R. O'Beirne: This is to

102 certify that John F. Parker, a member of the Metropolitan Police, had been detailed for duty at the Executive Mansion by order of Mrs. Lincoln."

(33 consecutive identical words)

". . . saying that it was a man riding on horseback that had shot President Lincoln."

(13 identical words)

"No, sir. It did not at the time seem to be sufficiently important."

(13 identical words)

"I am pretty certain that we have assassinated the

103 President and Secretary Seward."

(13 identical words)

"Sam'l Cox. His mill servant states that Cox

had been cooking provisions lately and carrying it to persons down in the swamp."

(21 identical words)

"I intended to have his body, dead or alive, or a mighty good substitute for it."

(16 identical words)

"The most extraordinary document I ever read, under the name of a law opinion."

(14 identical words)

104 ". . . The Commission was without authority, its proceedings void. The execution of those persons . . . will be murder."

(16 identical words)

"Upon a consultation with the Secretary of War and the Judge Advocate General, it is thought advisable that no action be taken in regard to the arrest of the supposed John Surratt at present."

(33 identical words)

107 (Plaintiff's Exhibit 17 received—the 85 parallels and identities.)

108 (Plaintiff's Exhibit 15 received — Dr. Riddle's marked copy of Millard article)

111 I am now reading my first parallelism, which is on page 37 of Millard. (Reads)

112 I am reading from page 25 of Shadow. (Reads)

(These are Quotes #2 and #3 in Plaintiff's Exhibit C, attached to Plaintiff's Exhibit 7, the 66 Quotes of Parallels.)

113 I am now reading Millard, page 105, paragraph 1,
114 beginning with "Only Stanton" to "finally arrived." (Reads)

Compare with Why, page 4. "Stanton did not" . . . to colleagues."

(This is the same as Quote 59.)

115-170 (Witness next reads the full passages in both authors' works from which the Quotes or Parallels were taken in Exhibit C of Plaintiff's Exhibit 7 marked, respectively, Quotes #4, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #20, #21, #22, #64, #65, #23, #26, #25, #24, #28, #29, #30, #31, #40, #33, #34, #34A, #48, #35, #49, #36, #50, #51, #53, #39, #55, #56, #57, and various identities not included in Exhibit C.)

170 (Witness temporarily excused so defendant may take the testimony of Mr. Naughton.)

Direct Examination of Mr. Thomas J. Naughton by Mr. Martineau.

172 My name is Thomas J. Naughton, I live at 15 Ridge Road, Thornwood, New York, and am a magazine
173 editor, now with Argosy, formerly with True, where I worked from February 1946 to May 1954. I was associate editor. I scheduled stories, wrote titles and
174 blurbs, edited copy, etc. I became managing editor in 1952. Millard article went to press in Dec. 1952 and on sale Jan. 20, 1953.

175 (Original manuscript of Millard's article marked Defendant's Exhibit #1 of 11/18/54. This is the same as Defendant's Exhibit #2 in connection with Millard's deposition.)

176 Probably in the middle of '51 I suggested to Mil-
178 lard that Lincoln's assassination might make a good
179 story. He had done two booklengths for us on the Civil War. From one of those ("The Devil's Errand Boy") I got the idea. The next I heard from him I got the manuscript. I had to cut it from 40,000 to about 20,000 words. I discussed no specific cuts with

him, but got his permission to cut. I sent it around office for comments and then to Mr. Daigh for purchase.

180 (Defendant's Exhibit #2 marked—the same document as Plaintiff's Exhibit #3 in connection with Daigh deposition—a comment sheet of editorial readers).

181 The story was approved by three readers, and ap-
182 proved for purchase by Ralph Daigh. We kept it around longer than usual, because we wanted to hold
183 it for the February issue. I had heard of Dr. Eisen-
184 schiml. Nothing was said at any time about checking the manuscript for copyright infringement. We re-
184-8 garded the writer as reliable.

(Various questions and answers with respect to fate of infringers objected to and stricken.)

186-8 (That part of Millard's deleted manuscript, which deals with Eisenschiml, is now read.)

189 The deletion was not intended as a particular slight to Eisenschiml. The only reference to Eisenschiml was in connection with an anecdote.

190 It is not customary to publish references or sources in a magazine article. (Objection.)

191 True had a circulation of one and one-half million men readers—a mass audience.

192 It is unusual for True to be cited as an historical authority, but it has been.

Cross Examination of Mr. Naughton by Mr. Gertz.

My editing of Millard's 1947 article was routine.
193 Millard never told me not to cut any particular pas-
195 sages. I edited the July 1947 issues containing the
197 Millard article on Baker. I may have mentioned to him the complimentary references to Eisenschiml in
his 1947 article in the conversation from which grew the
1953 article.

I did not ask him what "sensational discoveries of Dr. Eisenschiml's [mentioned in there], he had had in mind." Nor, so far as I know, did anyone else at True.

I had not read any books about the assassination.
200 My knowledge is derived from Millard's story.
201 So far as I know, no one at Fawcett, including myself, consulted with any Lincoln experts regarding Millard's article.
202 After reading the comment of one of the readers [who suggested submission of the article to Lincoln experts] there was a casual and brief discussion about it. It was concluded not to submit it.
202-203 Neither I nor anyone else at True took steps to prevent copyright infringements on Millard's article.
204 We depended on the reliability of Millard. Nobody at Fawcett or True checked sources and credits in
205 connection with the Millard article. The 1947 article
207 of Millard made a lasting impression on me. I might have mentioned to Millard that his article on the assassintaion might make a good book.

Re-direct Examination of Mr. Naughton by Mr. Martineau.

213-214 I never before heard of Millard being accused of a copyright infringement. (Objection)
216 The signing of the usual form by Millard (Def. Exh. 3 for identification) warranted the originality of the article before we accepted it.

Mr. Gertz: Objection.

The Master: Sustained. He doesn't know anything about his unblemished reputation, or anything of that kind.

Direct Examination of Dr. Donald W. Riddle (Continued) by Mr. Gertz.

219 I receive no compensation for testifying or other services in this case. I am not related to Eisenschiml. I received my education in Evanston, at the University of Chicago, at Heidelberg and Harvard.

220 I have degrees of Bachelor of Philosophy, Bachelor of Divinity, Master of Arts, Doctor of Philosophy. I began teaching at Kimball College in Salem, Oregon, in 1922. In 1923 I taught at the University of Chicago, and again from 1926 to 1942. In 1924 and 1925 I again taught at Kimball. I was in the army from 1942 to 1946. From 1946 to present I have taught American history at the University of Illinois.

221 I have published "Jesus and the Pharisees", "The Martyrs", "Early Christian Life", "Paul, a new Biography", [and many others] and "Lincoln Runs for Congress." I have almost ready for publication "Abraham Lincoln, Congressman", I have also published about forty articles of a scholarly nature. I belong to the American Historical Association, the Mississippi Valley Historical Association, the Illinois State Historical Society, etc.

222 I have read all of the principal literature on Lincoln biography and have exhaustively worked the sources
223 in my own field. I am familiar with Eisenschiml's reputation among Lincoln experts and American historians.

224 Eisenschiml's reputation among Lincoln experts and American historians as to originality is that these two books under consideration were the product of original research, with the result that new and important findings were contained in them.

225-226 My opinion is—they appear to me to be highly original.

230 The Master: From your reading, as much as you have read, with reference to the death of Lincoln, have you an opinion as to whether these [two books by Eisenschiml] are original or whether they are comprehensive reaction of much that has gone before?

Dr. Riddle: They are highly original. • • •

232 No author prior to Eisenschiml voiced any suspicion that Lincoln's assassination was a northern plot.
Nor was the story of Parker ever told;
Nor that there were more than four persons in the box at Ford's Theatre;
Nor that Miss Harris and Major Rathbone made divergent statements,
Nor what the significance of this was;
Nor that Forbes had made a statement about his whereabouts on the evening of the assassination;
Nor that Stanton had
233 perjured himself as to Lincoln's last visit;
Nor what Stanton and Eckert did that night;
Nor that their excuses were untrue.
234 Nor that the War Department had known the identity of the conspirators for several weeks.
Nor that Grant's excuse for not attending the theatre was a sham.
Nor that Grant could have seen his children almost as early by taking the morning train.
Nor had the timetable of railroads connected with Grant's journey ever been given.
Nor had any author pointed out that Stanton willfully withheld the news of the assassination, nor why.
235 Nor that Gobright acted peculiarly
by killing one of his own wires.
Nor that the news was released too
late for the [early] newspapers to print it
Nor that none of the Washington

papers printed Booth's name.
Nor that the southern newspapers did not get
the news until Booth had presumably passed by;
Nor that the interruption of the wire service
236 was an inside job;
Nor that Booth's pursuit was misdirected
and his escape route was unpatroled.
Nor that Pitman deliberately mutilated the
official record.
Nor had anyone pointed out the peculiarity of
the clews left in Atzerodt's room;
Nor pointed out Gleason's part in the story;
Nor that O'Beirne had left a diary and
other papers.
237 Nor any author pointed out the advertisements about
Lincoln's visit to Ford's Theatre.
Nor did anyone wonder why Parker,
Forbes and Hanscom were not questioned;
Nor why Cox, Jones, Jett, Bainbridge and Ruggles
were not punished;
Nor that Stanton and Parker were dismissed
about the same time;
Nor did anyone mention the blotter at
the Washington Police Station;
238 Nor that Booth's shot was fired at
10:13 P.M.

242 *Cross Examination of Dr. Donald W. Riddle*
by Mr. Martineau.

243 I did not assist in the preparation of the parallel columns in Plaintiff's Exhibit 7. My undertaking was entirely independent. Mr. Gertz provided me with a copy of Millard's article and I worked on it at my summer home.

249 The fundamental purpose [of my task] was to determine the literary relationship, [between the two authors' work] if it exists.

250 You set out the same factual situation to see if there is a literary relationship.

It is not true that there is no ownership of facts of
251 history.

251 I spent about forty hours on the Parallels. I did it without guidance from anyone.

252 Mr. Gertz gave me a set of parallel columns, but made no reference to anything he had done. Nothing was said about compensation, and I expect none.

253 I was just interested in picking out similarities, not differences.

255 I confined myself to the four corners of the works in question. I did not examine the source.

257 My assumption would be that Eisenschiml parallels his sources closely.

258 In one instance I am perfectly sure that Mr. Millard did not consult the source he quoted—The Velasquez document [Quote 53]. The use of italics shows derivations from Eisenschiml, and not Velasquez.

261 The italicized emphasis is not different, in my judgment.

262 I would say . . t he derived that from Dr. Eisenschiml, not from Velasquez.

265 I deduced from the fact that Millard italicized somewhat the same words that he copied Eisenschiml instead of the original source.

266 If Millard testified that he read the original source and italicized the words to emphasize the substitution of a body, that could not affect my opinion.

267 As to Quote #15 [Mrs. Lincoln's letter]; In this instance Millard could not have obtained that from

the original source, because it was in Eisenschiml's possession.

268 By having the letter set up haec verba, it did not become an original source in any respect.

271 The 13 instances of extensive identical reference
272 convinced me of Millard's direct copying from Eisenschiml.

278 It is my conclusion that Millard copied the Crook quotation from Eisenschiml instead of from Crook.

282 To me Millard's quotation from Bates indicates that
283 he lifted it from Eisenschiml, and if Millard testified that he went to the original source, it could make no difference to me.

(Witness temporarily excused.)

284 *Direct Examination of Otto Eisenschiml by Mr. Gertz.*

285 I live at 2300 Lincoln Park West, am a citizen of the United States.

286 This photostatic copy of a letter from the Department of State is a true copy. (Marked Plaintiff's Exhibit 17 for identification.) (Objection to introduction of Plf. Exh. 17 sustained.)

288 (Mr. Gertz asks for admission of citizenship and that costs be charged for failure to admit. He says he made same request weeks or months before.)

289 I follow different lines of occupation. I am a manufacturer, a business man, an author and a lecturer, all professionally. (Lists his books.)

290 Most of my books pertain to the field of the Civil War and the death of Lincoln. The death of Lincoln is dealt with in "Why Was Lincoln Murdered?" "In The Shadow of Lincoln's Death" and "The Case of A. L.—Aged 56."

I have published quite a few magazine articles; some
291 in Coronet pertain to Lincoln's death. Also in the Journal of the Illinois Historical Association.

To the best of my knowledge I have read every piece on the subject of Lincoln's death that has ever been published. (Lists books on the assassination.)

295 My books differ fundamentally from previous ones.
296 The others are recitals of known facts, while I introduce new evidence.

298 There are also chapters in mine that pertain to the
298 motives underlying the assassination. I have been a student of the subject for about 35 years. My re-
299 search consisted of looking up new material from sources not tapped before, such as the War Department archives. I looked up autographs, unpublished letters, diaries.

300 I did considerable traveling between 1933 and 1941
301 in connection with my research. (Lists trips and tells what he did on each trip.)

303 I made an approximation of my expenses in connection with my research right after the publication of Why, and estimated the amount as about $20,000.00.
310 I do not recall the details.

311 To my knowledge no other author ever expressed a suspicion that Lincoln's assassination was a North-
312 ern plot, nor that Stanton and the Radicals expected to profit from his death;

Nor did any other author give the story of John F. Parker;

Nor that there were more than 4 persons in the box at Ford's theater;

313 Nor that Miss Harris and Major Rathbone made divergent statements;

Nor what this divergence signified;

Nor that Forbes made a statement of his whereabouts that evening;
Nor that Stanton perjured himself as to Lincoln's last visit to the War Department;
Nor what Stanton and Eckert did that night;
Nor that their excuses were a sham.
Nor that the War Department had previous knowledge
314 of the identity of the Conspirators;
Nor that Grant's excuse for not going to the theater was a sham;
Nor that Grant could have seen his children almost as early by taking a morning train;
Nor did the time table connected with Grant's trip ever appear before;
Nor that Stanton willfully withheld the news of the assassination; or why;
Nor that Gobright acted peculiarly by killing one of
315 his wires.
Nor that the news of the tragedy was released too late for the early morning papers;
Nor that the Washington papers did not dare print the name of the assassin;
Nor that the news of the tragedy was released too late for the morning papers to print it;
Nor that the Southern papers did not get the news until Booth presumably had passed by;
Nor that the interruption of the wire service was an
316 inside job, or was part of a plan;
Nor that Booth's pursuit was misdirected;
Nor that Pitman deliberately mutilated the official trial record;
Nor did anyone point out before the peculiarity of the clues in Atzerodt's room;
Nor Gleason's part in the story;
317 Nor that O'Beirne left a diary.

I owned that diary and his papers at the time of

publication. Neither had been published before, so far
318 as I know, nor Mrs. Lincoln's letter to him.
319 I never saw the ads in the Washington Star published before I did.
320 Prior to my book, I never read a speculation as to why Cox, Jones, Jett, Bainbridge and Ruggles were not punished or why Parker, Forbes and Hanscom were not questioned, or anything about the almost simultaneous dismissal of Stanton and Parker.
321 Nor did anyone point out the existence of the 10th Street police blotter;
Nor give an account of premature reports of Lincoln's death;
Nor specify the time of Booth's shot at 10:13 P.M.
323 I shall try to show that the essential build-up of my books was followed by Millard in his article.
325-347 (Witness reads to illustrate his assertion the document which is now part of the record as Plaintiff's Exhibit #20.)
349 (Plaintiff's Exhibit 21 received without objection.)
(Plaintiff's Exhibit 22 received.)
351 (Plaintiff's Exhibit 23 received.)
352 (Plaintiff's Exhibit 24 received without objection.)
353 (Plaintiff's Exhibit 25 received.)
354 Mr. Gertz: Now I ask the master and the court to take judicial notice and the defendant to admit that the President . . . has issued proclamations pursuant to the Copyright Act . . . extending to subjects of Austria the privilege of securing copyright.

Mr. Martineau: . . . I wouldn't dispute you now.

The Master: OK. . . .

354-5 (The defendant admits acknowledgments to Eisenschiml by Carl Sandburg in his books. Acknowledgments quoted in full.)
355 (Additional requests for admissions.)

361 *Cross Examination of Dr. Riddle (cont'd.)*
by Mr. Martineau.

370 Neither Mr. Gertz nor Dr. Eisenschiml suggested that I verify the 66 items [Quotes] as infringements.
371 I have never been prompted in any way by either.
377 Eisenschiml's two books are highly original works.
I heard Dr. Eisenschiml's reputation discussed at the meetings of the Mississippi Valley Historical So-
378 ciety, for example his books were discussed as highly original by Prof. Avery Craven of the University of
379 Chicago, Prof. Thomas W. Hutchinson of the same, the late Prof. Chas. Sydnor of Duke University, Prof. Frederick Merk at Harvard, Prof. James Randall of Illinois University, Prof. Frederick Dietz of Illinois, and of course by my own colleague.
380 Dr. Eisenschiml's findings were so new and so im-
381 portant, they were positively startling. They were revolutionary.
381 His findings of fact, and the conclusions he drew, as well as the organization of the facts in a book, these were startling and original.
384 History is an art, not a science.
I regarded Eisenschiml's books as generalizations based upon statements of historical facts.
385 If Dr. Eisenschiml states a historical fact and then
386 draws a sound inference from it, it becomes an accretion to the historical fact; if it is unsound, it is an error.
391 (Commencing at this point, Dr. Riddle was cross examined in great detail as to each of the Quotes or parallels, set forth in full in Exhibit C attached to Plaintiff's Exhibit 7. Plaintiff objected to the prolixity of the cross examination. What follows is an index to the cross examination and, in addition, the passages which appellant believes to be of importance to fairly present the issues

on appeal insofar as this cross examination is concerned.)

(Where below a reference is made to a Quote, it is intended to indicate that the witness was cross examined with respect to the particular parallel identified by the given number in Exhibit C attached to plaintiff's Exhibit 7.)

392 Q. Would you read that to his Honor? What does Millard say there?

Mr. Gertz: Jack, we are not going to have that read into the record again, we already have that in the record.

Mr. Martineau: This is cross examination.

Mr. Gertz: I know it, but why should we?

Mr. Martineau: Because I want my cross examination to proceed as cross examination should.

Mr. Gertz: You already have that in as Defendant's Exhibit 3.

Mr. Martineau: Now I want it in the record, present it just this way so that the Judge doesn't have to tear all around the record for it.

Mr. Gertz: That is a long document. I am objecting, it is already in the record, to having it read once again.

Mr. Martineau: This is cross examination.

The Master: In his cross examination he has a perfect right.

Mr. Gertz: To have him read the whole thing into the record again?

Mr. Reuben: You started it with your parallel column. • • •

393 ff. Quote #1.

Mr. Gertz: Jack, do you mind if I make a suggestion, you can take it or leave it. I think we will be better off, even from the viewpoint of the court, if you simply refer to the item number, it will be understood that you are referring to the item number, whatever the langauge is, it is.

Mr. Martineau: Let me suggest to you, you will be better off if I do, but I won't be. I am sure you will,
394 that is why you are making the suggestion.

Mr. Gertz: I don't see the point of repeating what is already in the record.

408 ff. Quote #2.

414 ff. Quote #3.

417 ff. Quote #1 again.

421 ff. Quote #4.

426 ff. Quote #5.

435 (Witness temporarily excused.)

436 Mr. Gertz: Here is what I have, Jack. I thought maybe these would persuade you to admit the citizenship and we don't have to go through a lot of proof. I have these series of passports of Otto Eisenschiml from 1904 to date, issued by the United States of America, in which his citizenship is stated as a citizen of the United States of America, I have his father's citizenship papers, I have birth records in which his father is described as being of America, I have a group of other documents, all of which add up to in any language proof of citizen-
437 ship. If you still want to question it, I have nothing left to do on that point but to bring the documents back.

Mr. Martineau: I am sorry, I have never seen any of those.

Mr. Gertz: Would you want to take a few minutes to look at them? If you feel you want a little more time, I will simply have Dr. Eisenschiml bring the stuff back. But since the citizenship is in issue in this case, I don't know when it may be in issue elsewhere. I don't want to keep these documents, you know, these are original documents going back to 1869.

The Master: Will it take you very long to check them?

Mr. Gertz: I will give them back to Dr. Eisenschiml and have him bring them back the next time.

• • •

441 Mr. Martineau: Any preliminary matters, Elmer?

Mr. Gertz: I suppose before the end of the day I will have Dr. Eisenschiml introduce those different passports and the like. Otherwise you can go ahead now with the cross examination of Dr. Riddle.

Cross Examination of Dr. Riddle (continued)
By Mr. Martineau.

Q. Dr. Riddle, I have been spending the weekend trying to figure out some way to shorten this because
442 your time is valuable and I know his Honor's, Mr. Gertz' and Dr. Eisenschiml's is, too, and this occurred to me. If we leave out of the calculations the thirteen instances which you pointed out or which you said were exact copying or lifting, would it be possible to agree as to each one of the remaining instances, what you term parallelisms—I believe there were left about 72, roughly, whatever the record shows—would it be possible to agree, I say, that there is nothing within the four corners of the remaining 72 instances which would lead you to the belief that Millard copied or lifted his work, his parallel work, from Dr. Eisenschiml rather than Millard taking it from the original sources?

A. No, Mr. Martineau, I could not agree to that.

Q. Okay, I just wanted to know. I thought we could save time. Then would it be possible for you, Doctor, looking always at the remaining 72 instances, and I always exclude, your Honor, the 13 instances of exact copying that Dr. Riddle told about—would it be possible for you, Dr. Riddle, to look at those remaining 72 and pick out the instances which show to you that within the four

corners Millard did copy from Eisenschiml rather than from the original sources?

443 A. I should be glad to try to generalize it in that way, Mr. Martineau.

Q. I mean, if we couldn't cover it in one general question, as I tried to do initially, let's take them one by one then, and show me the instances which by internal evidence. I believe you call it in scholastic circles, do you not?

A. Yes.

Q. Namely, within the four corners, show to you a copying from Eisenschiml rather than from the original sources?

A. And you wish me to select some?

Q. Let's take them up one by one.

A. Yes. Might I preface that—

Q. Before you start, do you see what I am getting at?

Mr. Gertz: Yes.

Mr. Martineau: I am trying to shorten the thing.

The Witness: Might I preface that with a general statement, Mr. Martineau? You can examine it and if it is objectionable that will end it.

As I understand the validity of this method of literary analysis all that I could observe in those 13 longer

444 passages was that they established a literary relationship.

Mr. Martineau: Q. You speak now of the 13?

A. Yes.

Q. The first 13?

A. Yes. You see, so far no question is raised of whether Mr. Millard got them from Dr. Eisenschiml or from sources which might appear. All that I see there is the establishment of a literary relationship. You could put it this way: Millard derived from Eisenschiml, or Millard and Eisenschiml both derived from a common

source. There is a relationship. What is the relationship?

Q. I see. • • •

Q. In other words, so I understand what you are saying, you weren't giving your judgment that Millard actually copied it from Eisenschiml, you were just simply pointing out to his Honor that there was this literary relationship between Millard and Eisenschiml in regard to these 13 instances?

445

A. Yes, with subsidiary points to come subsequently.

Q. Yes.

A. Then to proceed to the others, such as those 66 on this list—

Q. Referring to exhibit what?

A. Defendant's Exhibit 5.

Q. Yes.

A. There you have passages which do not indicate that extensive parallelism, but indicate a relationship. There is where the answer should be obtained to what is the relationship.

Q. In other words, would it be fair to say that as to those which appear on Defendant's Exhibit 5, those parallels, the parallel there appears to you to be more one of fact rather than language?

A. Sometimes, and sometimes language is involved. Now, to come directly to your question, you had asked me for an example—well, I remember with reference to the first of the longer passages, do I still think in view of the fact that there is exact parallelism between Eisenschiml and Crook, do I still think that Mr. Millard derived from Eisenschiml?

446

Q. Rather than from Crook?

A. Yes, and I said I thought that Millard derived from Eisenschiml for this reason: When you look to the question, what is the literary relationship, I find a number

of passages in which Eisenschiml is the only possible source.

Now, if you wish I could, on the basis of Defendant's Exhibit 5, refer to some few of these and put that point before you.

447 ff. Quote #15.

448 ff. Quote #35.

450 ff. Quote #36.

452 ff. Quote #48.

454 ff. • • • Q. So will you tell us why, on the basis of these O'Beirne references, you feel that Millard lifted this from Dr. Eisenschiml's book rather than from original sources? Is it because the original sources were only in Dr. Eisenschiml's hands?

A. Yes.

• • •

455 ff. Quote #16.

(Mr. Gertz again objects to reading the quotes in full into the record.)

458 ff. Quote #51.

469 ff. • • • Now, will you get to the next case, where you feel, Dr. Riddle, that the four corners of Millard's quote indicate to you by internal evidence that he lifted from Eisenschiml rather than from the original source?

A. Yes. I would refer to any of the references involved in which Dr. Eisenschiml cites the records of the Washington Police Department.

• • •

470 ff. Quotes #13, 27, 34 and 34a the John Parker material).

475 ff. Quote #7.

481 ff. Quote #19.

490 ff. A. That concludes the list of this type where Dr. Eisenschiml cited a source. I have a number of refer-

ences to Defendant's Exhibit 5, of passages in which
491 there is coincidence or similarity in which there is no source reference in Eisenschiml.

492 ff. Quote #6.
498 ff. Quote #16.
503 ff. Quote #22.
510 ff. Quote #27.
513 ff. Quote #38.
519 ff. Quote #42.
526 ff. Quote #43.
531 ff. Quote #44.
543 ff. Quote #45.
549 ff. Quote #47.
560 ff. Quote #49. • • •

564 A. Yes. The significance is that this as a particular datum, and by itself a minor datum, is used by Dr. Eisenschiml and was used by him for the first time together with other data from which he drew the conclusion, that Secretary of War Stanton was implicated in the plot. Now, it is highly significant that the use made of this datum by Mr. Millard is predicated upon that conclusion which was an original contribution of Dr. Eisenschiml. That you will never find in Baker.

Q. Let's see if we can state this thing so upper courts can understand it. I am sure I want to understand anyway.

A. Yes, sir.

Q. The historical fact stated by Dr. Eisenschiml is first, that all ignored the facts about how these three confederate soldiers were treated?

A. Yes. • • •

568 Q. Now, if I understand you correctly, Dr. Riddle, and please amend me if I am wrong, you say that

Eisenschiml posed the question, first, were Stanton and the War Department accomplices in the murder of Lincoln?

A. Yes.

Q. Is that right?

A. Yes.

Q. And he was the first one, you say, to pose that question?

A. Yes.

Q. Now, you say, further, that Dr. Eisenschiml answered that question by means of incidents like this one we are talking about?

A. Yes.

Q. About this special treatment for these three confederate soldiers?

A. Yes.

Q. And he answered to the question by suggesting to the public in effect, Stanton and the War Department were accomplices in Lincoln's murder?

A. Yes.

Q. Isn't that true?

A. Yes.

569 Q. Now, isn't that, I suggest to you, sir, the exact opposite of what Millard says?

A. I don't think so.

Q. Because Millard says "Here, again, we face the incomprehensible mystery of the War Department's selective vengeance," doesn't that suggest the exact opposite of what Eisenschiml suggests?

A. I don't think so, but in any event, Mr. Martineau, the total effect of the Millard article in regard to the role of Secretary of War Stanton is itself a parallel of the Eisenschiml books. • • •

571 ff. Quote #54.

584 ff. Quote #58.

595 ff. Quote #59.
598 ff. Quote #61.
601 ff. Quote #60.
610 ff. Quote #64.
623 ff. Quote #65.
631 ff. Quote #53.
647 ff. Quote #8.

653 Q. Would you tell us how you arrived at that conclusion, Doctor?

A. Yes, sir.

Q. By comparison?

A. I arrive at that conclusion because I know how books are written. Books are written in a number of ways. One of them is the scholarly way which is followed by Dr. Eisenschiml in which sources used are always identified, and exact reference is made to them.

Now, an author who, for some reason does not undertake to do that may very easily and conveniently derive his materials from the products of these scholarly books in which case he has the material before him without the necessity of going to public libraries or to source collections and spending a considerable amount of money in making his own independent research, and that is my inference of what Mr. Millard has done based upon this passage, and much more particularly, upon numerous other passages. • • •

658 ff. Quote #9. • • •

663 ff. Q. Ordinarily wouldn't differences indicate a non-parallelism?

A. Yes, sir.

Q. It doesn't do that to your mind in this case?

664 A. Not in this instance. As I understand it, in this case as in other cases I am drawing a conclusion. Of course, I may be mistaken. My conclusion here is that this is a paraphrase.

Q. Well, let's see. Is it a paraphrase of fact or a paraphrase of language?

A. It is a dressing up in terms of the language with characteristic changes.

Q. You mean designed changes?

A. For example, long drawers as a detail of being nearly undressed.

Q. Yes, just a vivid detail.

A. A little speech. No, Mr. Millard says "pretty speech."

Q. Yes.

A. Dr. Eisenschiml says "little speech".

Q. Yes.

A. Those are the things which indicate to me that there is internal evidence of this being a paraphrase.

Q. I see. Well now, as to the statement of historical fact, however, does not Millard differ seriously from Eisenschiml as to the news which Stanton then received?

A. Yes, sir.

665 Q. And he must have gotten that from some other source, must he not?

A. Not necessarily.

Q. You mean you think that Millard just cooked that up out of his own imagination just in order to conceal his piracy?

A. No, sir, I attribute no such wrong motive to him. An author might restate a phrase without a wrong motive, certainly. In this case he is making his report of an incident and this is the form which it takes in his writing. It could have come out of his own mind there, being nothing in the nature of an appropriation or theft. • • •

669 ff. Quote #10.
680 ff. Quote #11.
686 ff. Quote #12.
696 ff. Quote #13. • • •

701 ff. Q. To refresh your recollection, Doctor, would you take a look at pages 272 and 273, volume 4, of Carl Sandburg's book "Abraham Lincoln, the War
702 Years," and see if it isn't true that Sandburg also treats of the same incident that both Dr. Eisenschiml and Millard treat of?

A. Yes, sir, I see it.

Q. He does, doesn't he?

A. Yes, sir.

Q. There is a very close parallelism between Sandburg and Dr. Eisenschiml there, isn't there?

A. Yes, sir.

Q. Would you say in your judgment it is closer than the parallelism between Millard and Eisenschiml?

A. You ask me to make a comparison. I hesitate to make that offhand. I should feel obliged to read Sandburg with some care to answer that question, Mr. Martineau. It appears to me on the face of it— • • •

704 A. As I say, there is a similarity between Sandburg and Eisenschiml and between Sandburg and Millard. I wouldn't say that in the treatment the differences are so slight as to be unimportant. That is the point I refer to.

Q. Would it be possible to prepare a chart, one of these comparison charts, showing the similarity between Sandburg and Eisenschiml and Millard?

A. Oh, yes, sir.

Q. I wonder, would you do that some time, or would that take a long time?

A. It would take a few hours. • • •

710 ff. Quote #14.
714 ff. Quote #18.
721 ff. Quote #20.
726 ff. Quote #21.
729 ff. Quote #23. • • •

734 ff. Mr. Martineau: Will you state that the original archives contain this whether Millard went to them or not?

Mr. Gertz: The archives are a huge collection of material, millions of documents, and somewhere in those millions of documents there is this document.

Mr. Martineau: We can stipulate to that.

Mr. Gertz: That is right.

Mr. Martineau: That it is a matter of public record.

Mr. Gertz: Well, if the archives are part of the public records, yes, they belong to the government.

Mr. Martineau: Yes, they belong to the government, and a citizen could get access to them.

Mr. Gertz: With permission.

Mr. Martineau: Yes.

Will you stipulate further that Dr. Eisenschiml did not get permission from anybody to photostat a part of the archives that was in the book?

Mr. Gertz: No, the reverse is true. He got permis-
735 sion from the War Department.

Mr. Martineau: He did, eh? Fine. We will get into that with Dr. Eisenschiml. • • •

737 The Witness: What you want for me to do is to check that passage in Sandburg and come to a judgment as to whether Millard or Eisenschiml is the
738 more similar to Sandburg?

Mr. Martineau: Well, I don't want to take up too much of your time. You have got to eat your lunch. If you can do it and give us some of your thoughts on it after lunch—

The Witness: Is that what it was?

Mr. Martineau: Yes.

Mr. Eisenschiml: That is pertaining to what?

Mr. Gertz: To Parker, the Parker story.

Mr. Eisenschiml: The whole 12, 13, 14, 15, or just one?

Mr. Gertz: Was it 14, or was it one, or do you want it all?

What was on your list, Don?

The Witness: 13. The question about Sandburg came up in reference to 13.

Mr. Martineau: I guess it was 13 and 14. You can treat them both together.

Mr. Eisenschiml: Which is the long one?

Mr. Reuben: That is 13.

Mr. Martineau: Yes, and 14. • • •

741 ff. Quote #42.

743 ff. Quote #43.

Q. Doctor, during the lunch hour did you make a comparison of language or a paraphrastic comparison between Sandburg's treatment of the John Parker incident and Dr. Eisenschiml?

* • • •

747 But now I call your attention to two points in Eisenschiml with special reference to the analysis so far. In the references to the use of bad language Sandburg has "profane and insolent". • • •

A. Millard: "For using profane, coarse and insolent language to the owner of a grocery store";

Eisenschiml: "The use of violent, coarse and insolent language".

Q. Yes.

A. Then in this connection, following the reference to being asleep on a street car, there is in Eisenschiml
748 and Millard a reference to the squawking of ducks. There is no reference to squawking of ducks in Sandburg. • • •

749 A. My conclusion with reference to quote 13 is that Millard's language is close to that of Sandburg, but that Millard's account contains material found in Eisenschiml but not found in Sandburg, so that I con-

clude that although there is close parallelism of langauge between Sandburg and Millard, the greater similarity is between Millard and Eisenschiml. • • •

Q. In other words, you say that Millard is closer to Eisenschiml than he is to Sandburg?

750 A. Yes, sir.

Q. In language?

A. Yes, sir. • • •

752 ff. Quote #14.

• • •

758 There you have an example of an item which is in Eisenschiml and Millard, but not in Sandburg.

Q. Yes.

A. Therefore I conclude with reference to quote 14 that the derivation is Millard from Eisenschiml, not Millard from Sandburg. • • •

760 Q. I see. I was going to ask you that question a little later, but we might as well cover that now. In other words, there isn't any discrepancy between what you first called your 85 and the 66 and Defendant's Exhibit 5?

Mr. Gertz: Except that he arrived at it separately and had a different numbering system.

Mr. Martineau: That is right.

Mr. Gertz: So by his numbering system it added up to 85. • • •

762 ff. Quote #24. • • •

766 Mr. Gertz: He also said this, and maybe we can agree to it: that he never looked at the blotter or anything else at the Metropolitan Police Force.

Mr. Martineau: That is right.

Mr. Gertz: And that a source for the comparison
767 between Fletcher's testimony as reported in the printed record and his real testimony was from the facsimiles in Eisenschiml's book.

Mr. Martineau: That is right, it will all come out when you read Millard's testimony.

• • •

767 ff. Quote #29.
777 ff. Quote #30.
781 ff. Quote #31.
797 ff. (Various stipulations with respect to "The Great American Myth" by George S. Bryan.)
800 ff. Quote #32.
806 ff. Quote #33.
817 ff. Quote #34.
824 ff. The 13 identities again. • • •

825 Mr. Gertz: Now, I have here certain passports which I would like to avoid having to deface by marking them. I would like to describe them and perhaps we can agree that that is what the original passports are.

Mr. Martineau: If you say so. • • •

826 Mr. Martineau: Might I point out, your Honor, that in view of Mr. Gertz' reading of the copyright treaty relative to Austrian subjects and having the right to copyright in the United States, that we regard all of this passport business as entirely immaterial, because even though Dr. Eisenschiml is an Austrian subject—

Mr. Gertz: He isn't, he is an American.

Mr. Martineau: I mean, whether he is or he isn't, he is still entitled to a copyright if he has a copyright.

Mr. Gertz: Maybe we could stipulate to something. I would like to state this for the record, and if you agree, then there is no point in a lot of evidence.

It is our theory as plaintiff that either as an Amer-
827 ican citizen or as a domiciled permanent resident alien or as a subject of Austria, on any one of those three theories, Dr. Eisenschiml was entitled to a copyright

for the two books, Plaintiff's Exhibits 1 and 2. We contend that he is an American citizen by birth, but irrespective of whether he is an American citizen by birth or not, we state that for the purpose of this case it is immaterial, because on any one of those three theories he was equally entitled to a copyright.

If you would concede that I won't have to offer all that evidence. • • •

Mr. Martineau: • • • Now, as to category 2 and 3, I would certainly agree with you, but I don't see why we have to bring category 1 into the deal at all. • • •

Mr. Gertz: Yes, and would you also admit that he has been permanently domiciled in the United States since 1902?

Mr. Martineau: As to that, I do not know. It is entirely immaterial now, because if I admit or stipulate that he is entitled to all the rights of an American citizen—

Mr. Gertz: So far as copyright.

Mr. Martineau: —in respect to copyright—

Mr. Gertz: Then we don't need it.

The Master: You have stipulated to that. That is behind us.

829 Mr. Gertz: That is the end of it, that is right. I want the record simply to state that we contend without having to prove that he is an American citizen from birth.

The Master: You have got that in the record now. • • •

The Master: He is entitled to a copyright.

Mr. Martineau: There is no question about that.

Mr. Gertz: The reason I went through this at great length was because they disputed the citizenship. I don't have to prove it.

Mr. Reuben: We never thought it was germane. • • •

Mr. Gertz: Okay, but I wouldn't want the implication

in the record that Dr. Eisenschiml from birth isn't
830 an American citizen.

The Master: Now you have got that stipulation.

• • •

832 ff. The 13 identities again.
833 ff. The first 5 identities.
839 ff. The Crook identity.
842 ff. Identity #3.
843 ff. Identity #4.
The Eckert episode.
849 ff. Identity #5.
851 ff. Identity #6.
856 ff. Identity #7.
858 ff. Identity #8 (?), Quote #33.
870 ff. Identity #9 (?), Quote #35.
878 ff. Identity #10, Quotes, #37 and #53.
879 ff. Identity #11, Quote #39.
880 ff. Identity #12, Quote #39.
888 ff. Identity #13, Quote #56.
893 ff. Dr. Riddle's "Probability Theory."

• • •

894 • • • when I analyze the article and find close similarity of these statements of historical fact and the close similarity of conclusions drawn from these facts and the generalizations which Dr. Eisenschiml made, then I take it that that establishes a degree of probability that, since what Mr. Millard wanted as a writer was readily before him in the books, that it is highly improbable that he spent much time, made much effort or spent much money getting at those other sources. • • •

895 I also perceive that Mr. Millard read and used other books than Dr. Eisenschiml's. Of course he did. Anyone would. It is perfectly proper that he should do so.

Q. And likely and probable that he did do so?

A. Yes, and proper that he should do so, but as far as this analysis is concerned, that is extraneous, when I find that use of materials, which materials are uniquely the product of Dr. Eisenschiml. That indicates that high degree of probability, and still I speak purely with reference to the method of analysis that I have followed, which indicates, I believe, a high degree of probability that he used the Eisenschiml books and that in these instances he did not use others.

• • •

896 Q. Well, tell me this. Would a conscientious scholar or writer, assuming that he read Dr. Eisenschiml's books initially, as you did, and became struck with the theory, would it be conceivable that a con-
897 scientious writer or researcher would, guided by Dr. Eisenschiml, read the original sources and check up on them? Do you think that is probable?

A. Well, Mr. Martineau, we encounter this factor of "How much could this writer afford to do?" • • •
898 Now, to take an example from Millard's article, he makes a reference to the ultimate source, the Albert Galatan Riddle papers. Now, I ask myself, "Is it likely that Mr. Millard would have made the trip to Cleveland?" I don't know where Mr. Millard lives. Is it likely that Mr. Millard made the trip to Cleveland to consult those sources? Unless he was close to Cleveland, it would have been a difficult matter, taken time and cost money. Could he afford to do it?

You see, those are factors in the probability. • • •
901 ff. The difference between Millard and Eisenschiml.
902 There were no differences in the parallel passages.
907 ff. The revisionist historians and Eisenschiml.
908 ff. There has been great discusion of Eisenschiml's theory of the assassination in learned circles.
909 By Professor Paul Buck, "Pulitzer Prize Historian".

Mr. Gertz: By Angle in his book "A Shelf of Lincoln Books." • • •

In the Journal of the Mississippi Valley Historical Association, the American Historical Society, the Illinois Historical Society and others.

910 I don't think there were two schools of thought. What you have is the traditional understanding of the assassination and the revisionist, which is associated with Eisenschiml. The traditional school holds that Booth was a crackpot and had no aid from higher-ups in the government, whereas Eisenschiml suggest the contrary.

911 Bryan belongs to the traditional school. His book has been provoked, at least in part, by Eisenschiml's new evidence.

912 I can't think of any others. The recent book on Stanton by Pratt follows more the traditional view.

You ask me to add up from memory the books 913 the original sources that Eisenschiml researched. I would name them, but of course I could not exhaust the list

The O'Beirne papers.

The time table of the Camden and Amboy Railroad.

The official record of the Conspiracy trial.

The Surratt trial.

The Johnson impeachment proceedings.

These are representative original primary source materials.

Aside from these and the Police blotter, which Eisenschiml dug up, the other sources which he researched are all available to the public.

914 I should like to add the thorough scrutiny of contemporary newspapers. They would be available but must be numbered among the primary sources.

915 After Eisenschiml points the way and cites these newspapers, any other scholar can examine these

sources. This does not apply to the O'Beirne papers of the Camden Amboy time table, nor any longer to the records of the Metropolitan Police, which are no longer in existence.

916 I learned that from Eisenschiml.

Then, of course, there are the secondary materials.

917 You ask me to list the new and original findings of Eisenschiml.

I associate all of them together with the generalized point of the establishment of a high degree of probability that Stanton was involved in the conspiracy plot,

918 that he was the key figure. That had never been pointed out before. This can be broken down into numerous points.

What struck me most strongly was when I first read of the interruption of the telegraph service. Only Stanton could have done it.

919 The naked fact of the interruption had been known, but Eisenschiml put a new interpretation on it.

Then it was readily understandable how the confusion in setting out for the pursuit of the assassins could tie to Stanton. That was the new and great and striking finding.

920 I should like to bring in Eisenschiml's use of secondary sources as well, for in these again many isolated facts appeared, but the strange thing is that previous to Eisenschiml, no one had observed their significance by bringing them together.

921 No standard book on the assassination had cast suspicion on Stanton. Lloyd Lewis mentioned higher-ups, but did not name Stanton. He named Johnson, who was no puppet of Stanton.

922 I may be mistaken, but I think Eisenschiml was the

923 first one to call attention to the photograph which was one of Edwin Booth, not of John Wilkes Booth.

Eisenschiml: The archives were sealed up at the time Robert Lincoln was Secretary of War. They disappeared until 1923 (1933), when I discovered them.

925 Dr. Riddle: I have finished my statement concerning the original findings of Eisenschiml, in the sense of hoping that the instances I recited would be sufficient.

To state which facts were found or stated for the first time by Eisenschiml I would have to consult the books and make notes.

926 If the questions were broken down specifically, I think I could answer them one by one.

928 To the question, "Did any author prior to Eisenschiml voice any suspicion that Stanton and the Radicals stood to profit by Lincoln's death?" I an-
929 swered "No."

For all I know as a witness on oath, there may have been some other author, who had voiced this suspicion, but my question was answered on the basis of my profession. A scholar reads many books, and may
930 not remember this or that book.

As a scholar, I am sure that it was not there.

(Mr. Martineau reads a paragraph from Lloyd Lewis.) "Through December and January 1864, the Radicals massed their forces to drive Lincoln from his merciful position on reconstruction. To them it was vital that Lincoln be forced to abandon his lenient program before the end of the war should come."

Dr. Riddle: I agree that the Radicals were very much opposed to Lincoln in regard to reconstruction, and had to drive him from his position.

931 Yes, one of the means could have been his assassination.

(Mr. Martineau again reads from Lewis.)

Yes, this is a plain statement of a rather vicious hatred the Radicals had for Lincoln.

And if something happened to him they would
932 be glad, including his death.

I point out, though, that the clear implication of those passages is Radicals in Congress concerned with the congressional reconstruction plan.

933 Stanton was in the Radical group.

(Mr. Martineau reads more from Lewis.)

Dr. Riddle: This is another statement of a bitter
934 enmity between the Radicals and Lincoln.

(Mr. Martineau reads more from Lewis.)

935 Dr. Riddle: I do not understand that this is a hint by Lewis that the Radicals may have been concerned in Lincoln's death, nor that they stood to profit by it.

936 As I understand the whole point of Lewis' view, the references are to political reconstruction. I do not get from that the thought, however faint, that they were concerned with his death.

I agree that they were not unhappy that he was gone, but do not go along with you that they stood to profit by his death.

937 ff. Quote #9 again.

Mr. Gertz asked me, "Prior to the publication of the Eisenschiml books, did any author state what Stanton and Eckert did on the night of the assassination, and what their excuses were or that the excuses were untrue?" and my answer was "No."

938 There you have one of those illustrative points. Various of these facts are in the documents, but Eisenschiml was the first to bring them together and show their significance.

939 Some one author will give one fact, of what, say Eckert did; but no one tells you what they did that

evening until they are all brought together.

942 I am contending that [a particular datum] had appeared in Bates years ago. There is a statement of one fact of what Eckert did, but Eisenschiml's Chapter 5 takes that plus others, (also undoubtedly in previous works), but any one will not tell you, save for the specific data, what they did. So I think it is correct to say that prior to Eisenschiml no author stated what Stanton and Eckert did on the night of the assassination.

945 Mr. Gertz' next question concerned the excuses of Stanton and Eckert. Bates tells what excuses they gave to Lincoln but the point is what excuse,
946 the excuse which they gave or the real explanation of their behavior.

948 My answer to Mr. Gertz was not incorrect I was
949 implying the whole Eisenschiml theory.

954 (Mr. Martineau reads the Storey article from Atlantic monthly).

Dr. Riddle: That is a fair statement of some of the things Stanton did on the night of the assassination.

955 Mr. Gertz: Millard changed Mrs. Stanton into a servant.

956 Mr. Martineau: If it is, I certainly would be the last to deny it.

Dr. Riddle: Others authors stated these specific facts in practically the same language, excepting the inference Eisenschiml draws from them.

957 Martineau: I suppose your point is that Bates just states the fact, and does not point up—draw it all together, whereas Eisenschiml does.

Dr. Riddle: Yes, but that is a beautiful illustration of my point of the negative. What Bates story does not even say but implies that Eckert was home.

958 Eisenschiml makes the important point that although he was supposed to be at the War Department, he was not.

Mr. Martineau: Well, this is it, then prior authors could say A) Stanton and Eckert told Lincoln that they were going to be busy that night;

B) without any connective issue, Eckert was home when he was notfied.

Now these prior authors did not say, "Lock at this contradiction. They must have lied," Eisenschiml comes along and calls attention to the contradiction.

Dr. Riddle: I think you just put it very well.

958 ff. Quote #16 again.

968 ff. Quote #22 again. • • •

973 Mr. Gertz: Jack, I am perfectly willing that you develop whatever you want to, but aren't you going a bit far afield?

Mr. Martineau: No. No, because I think it is important. He has told about these things, and I do believe that in your affidavit you mention them as important parts of the doctor's theory, you see.

Mr. Gertz: Surely, but we don't have to prove here whether or not Dr. Eisenschiml is right or wrong. All we have to prove is infringement.

Mr. Martineau: I am not suggesting that you do have to prove that he is right or wrong, or that I have to either, but I do suggest that we have to see wherein these facts fit into the doctor's theory. • • •

984 ff. Quote #10 again.

988 ff. Quote #5 again.

990 ff. Quotes 4, 5, 6, 7, and 8 again.

992 ff. Quote #5 again.

1001 ff. Quote #35 again.

1009 ff. Quotes #13 and #14 again. • • •

1017 Mr. Gertz: I want to make this clear. I have been very patient. I had a man on the stand for half a day. He has been cross examined for six days.

Mr. Martineau: Because of tactics like this.

Mr. Gertz: On every kind of thing under the sun.

1018 I have been as patient as I can be, but there are limits as to how much a man can be cross examined. Now, I want to every now and then, at least, call a halt to this just endless chewing over these things, and where a man tries to create an impression on cross examination about books or anything else, I am entitled to try to cut the thing short, to make it briefer. I think it is just unconscionable that a man should have been on the stand so long in cross examination as it is.

Mr. Martineau: The only unconscionable part was the questions that were asked.

Mr. Gertz: I have a right to try to cut it down.

Mr. Martineau: That is the unconscionable part, the questions that were asked him.

Mr. Gertz: Nonsense. You could have cut this cross examination to two days at most, and you have been at it six days. • • •

1057 Mr. Gertz: I would like to state just briefly without argumentation for the record again, my objection to the unreasonable length to which this cross examination has gone, that has transcended all limits of agreeableness.

The Master: Let the record so show. Proceed.

Mr. Martineau: Maybe this will have a salutary effect on Elmer putting any more expert testimony on the stand, and this is no reflection on you, Doctor, but my understanding of the law is that expert testimony is not admissible in a case of this sort.

Mr. Gertz: That is not the law at all, and if you don't know, you don't. • • •

1082 Mr. Gertz: So you finish your examination. I have already expressed the opinion that I think it is too prolonged and I am not going to give you the opportunity to make it even more prolonged.

Mr. Martineau: Then in that case I would apply to the Court for relief.

Mr. Gertz: You could call him back as your witness, then, because when he is dismissed I want him to be dismissed. • • •

1083 Mr. Martineau: I just want to make sure that we have covered all the items.

Mr. Gertz: Yes, but I am for the record expressing an unwillingness to have the cross examination hang in mid-air. I believe that he should finish his cross examination and not say, well, at some future date I am going to finish it. It is like in any other trial when you have a witness before you, you finish.

Mr. Martineau: If we are going to start playing according to the rules, then I think we will have to make things go on both sides.

Mr. Gertz: I have already said that I think you have gone far beyond the limits and I am not going to give you an opportunity to go even farther. • • •

1091 (End of cross examination of Dr. Riddle.)

1093 ff. (Mr. Gertz attempts to introduce portions of Millard's deposition as if the testimony of an adverse witness. Mr. Martineau objects and then withdraws his objection. Portions of Millard's deposition read into the record directly or by page references.)

1130 *Direct Examination of Otto Eisenschiml (Continued) by Mr. Gertz.*

The markings and underscorings in Plaintiff's Exhibit #1 were made by me, and extra copies were made by people in my office.

1132 The markings and numbers in Plaintiff's Exhibits #1 and #2 refer to the Millard article (Plf. Ex. 3).

1134 The numbers in the margin correspond to the 66 Quotes.

1138 I wish to correct or change, or explain and clarify some things I said in my affidavit.

1139 I would like to correct paragraph 10 on p. 2 to
1140 read: "The work affiant did on 'Why Was Lincoln Murdered' involved about 18 years, and, together with 'In the Shadow of Lincoln's Death', the expenditure of [about $20,000".]

On p. 3, line 3, I will read line 2 first "A special secretary worked for him for about 3 years." I want to change that to "several years".

1141 In Paragraph 10 I want to omit the last 2 lines beginning with "The cash expenses for 'In the Shadow of Lincoln's Death' amounted to about $3,000 in addition to his own time", because I have already included this expense in my first change.

Page 4, paragraph 13. Change "book reviews" to "books, reviews".

1142 Page 6, point (d): "The reports of Lincoln's death had been published." I want to change "published" to "reported".

Point k, n, p, r, on page 6 and x, on next page
1143 should be introduced with the words "the significance of".

(k) will now read "The significance of Stanton's false" etc.

(n) will read, "The significance of the contradictory" etc.

(p) will read "The significance of the statement" etc.

(r) will read "The significance of the fantastic clues" etc.

(x) Page 7, "The significance of Stanton's delay" etc.

1144 (dd) Page 7, "The reason for the premature arrest" etc.

(ff) I would like to withdraw.

Par. 20 (b) I want to add after the last words, "Washington quarters", "and that it pointed to Stanton".

Page 11, par. 26. I want to insert the word "about" in front of "25%".

That is all.

• • •

The last time I was able to buy the February 1953 issue of True was early in November of that year.

At and immediately prior to the publication of the February 1953 issue of True I was engaged in an effort
1145 to republish "Why Was Lincoln Murdered." I engaged an agent, Ralph Newman, owner of the Abraham Lincoln Bookshop.

1149 The Master: And what did you direct him to do to secure republication of your books?

Eisenschiml: I directed him to tie up . . .

The Master: I think this is as far as you can go. . .

1151 Mr. Gertz: Have you arranged for the republication.

Eisenschiml: No, not successfully.

Mr. Martineau: I object to successfully.

The Master: The "not successfully" may go out.

1152 The "No" may stand.

1153 Mr. Gertz: Did you have anything whatsoever to do with a letter written by Charles E. Mason to Fawcett Publication, Inc., under date of February 19, 1953?

1154 Eisenschiml: Nothing whatever. . . . I did not know before he wrote that letter that he was going to write it.

Millard visited me once, and looked over my books. I would not call it research. He spent about one and one-half hours. It was about 1946, I imagine. It was prior to

the publication of his story, "The Devil's Errand Boy."

I never talked to him after that, with the exception of when I met him in New York, connected with his deposition.

1156 ff. Quote I.

1163 I suggest that I may take #I in my own fashion.

1164 The internal evidence here is that these changes aroused the suspicion that they were made for a purpose. If the purpose is not apparent, the changes were made to cover the source.

"The little village" against "the town" is apparently without any value.

The "40 miles" against the "80 miles" is important. My suspicion is strengthened by the fact that by leaving out the 80 miles, the author weakened his point. The farther away this little town was from the nearest telegraph and railroad, the stronger the improbability that news could have reached it.

There is further evidence. In Chiniqui's book a whole chapter is given over to the assassination, from page 718 to page 735, part of it is source material for the excerpt Chiniqui himself quotes. Yet Millard has not mentioned the book in any other fashion.

1165 Mr. Martineau: I move to strike the entire answer.

The Master: I don't think there is any question about that, but we will adjourn till tomorrow.

1170 ff. Quote #3.

Mr. Martineau: It is understood that I object to this line of questioning.

The Master: Let the record so show.

Eisenschiml: Millard states that "At 2:30 P.M. of April 14 the Whig Press of Middletown, New York, pub-

lished the news." As a matter of fact, it published the news on the 19th.

1171 I got my information from the archives in Washington, of the Provost Marshal's office. I made a note at that time. I have it with me.

(The note is marked Plaintiff's Exhibit #27A).

1172 The notes were probably typed by Virginia Maier. They were typed immediately and checked against my pencilled notes.

1173 I never showed this note to Millard. I suppose the pencilled note was thrown away after being checked.

1174 ff. Quote #9.

This Quote was taken from the Atlantic Monthly of April 1930, page 464.

1175 ff. (Reads part of the article into record)

1176 I made myself thoroughly acquainted with the record department of the Police Department in Wash-
1177 ington. I examined them in or about 1933.

1178 My visit was not a continuous one, and was spread more or less over the year. There were several visits, totally I would say five or six days.

The records were in a haphazard condition, and located in two different places.

1179 The ledgers, as they called them, were in the garret, piled half way up to the ceiling without any order whatever. There was another department which had files that were completely haywire. That was when I first looked at them.

I examined the records from 1861 to 1865, whatever I could find.

1180 ff. Quotes 13, 14.

The material for #13 and #14 was scattered all over. The arrangement is my own and not identical with the arrangement of any document of the Police Department.

The material for #13 and 14# was not found in one document, I don't know in how many.

1181 I know of nothing in print on the Quotes 13 and 14 prior to the publication of Why; nothing containing the information set forth in these Quotes.

1181-82 I do not think there was anything of it in print containing all the material in Quotes 13 and 14, since the publication of Why and the publication of the Millard article.

During my visits to the Police Department I examined the police blotter, and made a photostat of it. I made notes of the records. Other than the police blotter, I do not think any records with respect to Parker are now in existence.

1183 ff. Quote 17.

I find internal evidence in Quote 17, that it was copied from me by Millard.

(Reading from the True article, page 109, column I, center: "And there is something terrible sour about the picture of a Washington newspaper man concealing the news beat of the century.")

This follows what is quoted in #17 in Exhibit C. I am now quoting from Exhibit I, page 29, after the top, paragraph 1, line 3: "If Hanscom was any kind of a newspaper man, why did he not . . . secure for his paper the great scoop of the century?"

1185 ff. Quote 21.

I found partial internal evidence that Millard copied from me.

1186 I am turning to page 175 of "The Great American
1187 Myth", after top, paragraph 2, it reads, "Coachman Burke." There was no such coachman that I ever heard of.

Mr. Gertz: In the index page 413, there appears, "Burke, Francis, Lincoln's coachman etc."

Mr. Martineau: Subject to verification, I will take your word for it.

1188 The name of the coachman was Francis Burns.

1189 ff. Quote 26.

I find internal evidence of copying here.

(Reads from "Magazine of History", February 1911, an article by Gleason

1190 but is asked to read it again without skip marks.)

1191 "It took a long time to reach General Augur's and when we arrived we found everybody excited, and confusion reigned. If there was any cool-headed man there he was not in sight—nor is it to be wondered at, the shock was so great the mind was dazed and numb.

"I went at once into a small room where several officers were holding some sort of a conference, told them all I knew about the persons suspected, and advised the arrest of Wiechmann and everyone found at the Surratt house, which should be searched at once. I also asked for a cavalry squad to go with me to the Surratt place in Maryland, as I thought the assassin would escape that way.

"But they thought I could be of more assistance in Washington than in pursuit of Booth, who by that time was known to be the assassin. Sometimes toward morning I was allowed to go back to my room."

1192 ff. Quote 29.

I found internal evidence of copying here. I shall read from L. A. Gobright, "Recollection of Men and Things During a Third of a Century", 1896, page 348.

1193 (Reads)

1194 ff. Quote 36.

1195 Eisenschiml: I found internal evidence of copying here. I am referring only to the last two lines of Quote 36. "To remain on the Maryland side of the Potomac," is my version.

"A flat order from Stanton to remain on the Maryland side," is Millard's.

1196 Mr. Gertz reads the entire sentence, beginning with "One can imagine his surprise" and ending with "on the Maryland side of the Potomac."

1197 And from Millard: "Back came a prompt and to O'Beirne, bewildering reward for his zeal . . . a flat order from Stanton to remain on the Maryland side, and under no circumstances, push his pursuit into Virginia."

(It is stipulated that the matter of damages will be
1198 reserved until the Court has adjudicated the issue of infringement.)

1198 ff. Quote 36. Internal evidence of copying.

1201 ff. Quote 39.

I find internal evidence of copying here.

Mr. Gertz: Is it your contention that it is improper to ask Eisenschiml to state his reasons in connection with each of the quotes that there was copying?

Mr. Martineau: I think that is argument.

1202 Martineau: If it is helpful to the Court, it should go in subject to objection.

1202 ff. Eisenschiml reads from "The Annual Report of the American Historical Association, 1930, Vol. 4, The Diary of Edward Bates." • • •

1206 Mr. Gertz: I am not going to read, I am just going to indicate so it is in the record, the last 12 lines on p. 100 of Millard's direct examination and the first 11 lines on p. 101.

1206 ff. Quote 40.

Eisenschiml: I find internal evidence of copying here. I am going to read from "The Lincoln Herald", Feb. 1946, p. 25.

1207 (Reads)

I will now read again from Baker, p. 479.

Mr. Gertz: Offers Millard's deposition p. 501 and part of p. 502.

1208 ff. Quote 47.

Eisenschiml: I find internal evidence of copying here. I shall read from a statement made by Dr. S. A. Mudd (the document is marked Plaintiff's Exhibit 28).

1209 This is a copy of a statement in the files of the Provost Marshall's office in Washington entitled "Statement of Dr. S. A. Mudd." I obtained it there, and it was copied on the spot, in pencil by myself and immediately transcribed and checked. It is now in exactly the same condition it was then.

1210-1211 (Reading part of it):

"His friend urged me to attend to his leg as soon
1212 as possible, as they were very anxious to get to Washington; and then, it is my impression, he inquired if they could not reach some point on the Potomac, where they could get a boat to Washington."

1212 ff. Quote 54.

I see internal evidence of copying here. (Reads from various documents).

1214 There is, other than the 66 Quotes, one sentence which contains material pertaining to this matter.

1215-1219 (Discussion on admitting argumentation by Eisenschiml.)

1219 I am reading from Millard's article, p. 112, vol. I,
1220 almost in the center paragraph, the one beginning with "Meanwhile". "Major OBeirne, the District Provost Marshall, rushed a detective named John Lee over to the Kirkwood House to guard Andrew Johnson. Then Lee, probably stopping for a quick one at the Kirkwood Bar, heard from the bartender, Michael Henry, about the suspicious actions of Atzerodt."

I shall now read from Exhibit 1, p. 66, line 8 from
1221 bottom: "Vice President Johnson who had his living quarters at this hotel, and hence a detective of Major O'Beirne's squad, John Lee, was sent there as a guard, after the assault on Lincoln on the night of April 14. A bartender by the name Michael Henry told the detective of his suspicions regarding the odd looking stranger who had behaved queerly."

Now I am reading from the O'Beirne papers.
1222 The letter is marked "Kirkwood House, July 20, 1865 "and reads: "To O'Beirne: Having on or about the 15th of April given information to the Detectives then on duty guarding Mr. Johnson's room. One suspicious character in room 126 of the Hotel which is being searched, proved to be Atzerodt's, and from the things found in the room. He was caught I would like you to give due consideration and if it is worth anything I hope to receive it. This statement I can prove by two or three detectives now in the service of the government.

Yours most respectfully,
Michael Henry, Bartender"

1223 I shall now read from Pitman, p. 144, John Lee's testimony: "On the night of the 15th of April, I went, by order of Major O'Beirne, to the Kirkwood House. When I got there a person employed in the home, whom I knew, told me there had been a rather suspicious looking man there who had taken a room the day previous."

I shall now read Lee's testimony from Ben Poore.
1224 "I then went out into the barroom; and while I was there, a friend came up to me—I say a friend, because it was a man whom I see about the streets every day. He said there was a rather suspicious looking man there who had taken a room the day previous and that I had better go and look at the book."

I am now reading the version in the Philadelphia
1225 Inquirer, p. 23: "It was the night of the 15th of April. I then went, and while there a friend came to me and said there was a rather suspicious looking man who had taken a room there the day previous and I had better go and look."

I have never seen any source other than the O'Beirne papers where the bartender Michael Henry is mentioned.

1228 (The Henry letter is marked Plaintiff Exhibit #29)

I located the original pencilled note.

1229 (This note is attached to Exhibit 29.)

1233 I shall now make explanatory statements on the specific instances discussed yesterday where there is internal evidence of copying. I begin with Quote 3.

1234 I stated that this particular number of the Whig Press of Middletown, New York, was published on the 19th of April, 1865, but Millard gives the publication date as April 14. My conclusion is that if he really had examined the paper he would have noted that it was the issue of the 19th. The language in the paper was awkward, and in following it. I might have given the impression that April 14 was the day of publication.

In other words, Millard misunderstood my language.

1235 Before I go to the next Quote, I want to point out that I quoted 4 instances of premature rumors of Lincoln's assassination. I believe there must be many more, and it is curious that Millard quoted the same 4, and none else.

The next Quote was #9.

The point I wanted to bring out yesterday, is that Millard in his version introduced a servant. The writer telling a story from a source material may use his literary

license to change phrasings, but he would be disinclined to contradict his source. In the source it was distinctly stated that the servants were absent, which leads me to the conclusion that Millard did not read the original
1236 article.

Quotes #13 and #14.

In the original records of the police department these records are in staccato form, like "John F. Parker, born May 19, 1830 etc. Trade: Carpenter, Residence—" whatever it is.

1237 The narrative [form] in Quotes 13 and 14 is mine, and Millard follows my phrasings almost exactly.

1238 Quote #17.

The expressions "The great scoop of the century" and "the news beat of the century" are unusual ex-
1239 pressions, identical in meaning and very closely allied. I therefore believe that Millard took it from me.

Quote 21.

When I read #21 yesterday, I did it to show that Bryan, the author of "The Great American Myth", who calls Burns Burke, is not dependable. Anyone using Bryan could not have come up with the name Burns (as Millard does).

1240 Quote 26.

1240 ff. Today I would like to read the different versions in a foreshortened fashion, so as to bring my point home better. This is the way the article appeared in the "Magazine of History." (Reads Plaintiff's Exhibit 30).

1242 Quote #29.

1243 I am abbreviating again. (Reads Plaintiff's Exhibit 31).

1245 ff. Quote 36.

I read everything pertinent today, and my conclusion rests on the ending of the sentence which, in all the books quoted, said that "he was refused."

1246 Only in my language he was "ordered to remain on the Maryland side" [of the Potomac].

1246 ff. Quote 39.

I quoted various passages from Bates that might have been quoted with equal pertinency. I myself was in doubt which one to quote.

Millard accepted mine.

I read Orville Browning and showed that the sentence or paragraph in which the quotation occurred is longer than indicated in this quotation, and might very well have been quoted in toto, or in larger proportions.

1247 When the entry was made, Browning was not Secretary of the Interior. I would describe him as an ex-Senator from Illinois. At that time he had no official position. And in the original work he is named Orville Hickman Browning, and I shortened it. Millard did the same.

1247 ff. Quote 40.

I showed that the description of the Surrattesville Tavern was taken from my own, and does not appear in either Baker or the magazine "Lincoln Herald."

In neither is there a description at all like mine.

1248 I may add that in the Lincoln Herald there are some pictures, which do not show the peach orchard, the shed and the barns.

(The Herald article is marked Exhibit #32.)

1249 ff. Quote 47.

In the original statement by Dr. Mudd, which I read yesterday, the expression about going north and south are not contained. On p. 92 of Exhibit 1 is a

1250 map. Unless my readers look at it, they would not

understand the question. You will notice on it the town Bryantown, and Dr. Mudd's home about half way on the dotted line between Mathias Point and Washington.

Booth and Herold arrived at Dr. Mudd's house,
1251 pretending that they were riding to Washington, not from Washington, so as to avert suspicion. In reality they were trying to go South, and had to fool Dr. Mudd, so as to get his road information without giving their game away. If you look at the map, you will see that the closest place at which the Potomac reaches Bryantown is south of that town. Now you will understand what I meant by saying "The fugitives were in a hurry to reach the Potomac going south. Herold claimed that they might find a boat to take them back north, to the
1252 Capital."

The point I want to make in regard to Millard's version is that in his saying "Herold admitted". In this case the differences between these words is striking.
1253 By using the source I used, he could not have used the language he did; and only by using my Quote 47 could he have come up with his Quote 47.

1254 Quote 54.

In 1937, in Why, I said, "In all likelihood a promise of clemency was held out to Mrs. Surratt."

In 1940 when I wrote Exhibit #2, my surmise had been proved by testimony of Colonel Wood in the Washington Gazette, which I did not know when I wrote Exhibit #1.

1255 Quote #64.

In order to arrive at the opinion that Booth fired his shot close to 10:13 P.M.

I made some tests, part of which I laid down in Exhibit #2, p. 353, line 10.

1256 (Reads from Exhibit #2).

My tests were these. The custodian of Ford's Theater indicated to me where the dressing rooms of the artists must have been.

1257 I then placed myself in front of the theater entrance, on the spot from where that man was supposed to have rushed to his dressing room. Then I took his statement that he was not there more than two minutes, and the time came out 13 minutes past 10.

I said "close to" because there are some intangibles in the calculation.

I have never seen any source, whether in print or in a document, aside from my book and Millard's article, in which the time of 10:13 appears.

1258 This is my photographic album, marked "Taken in April 1933", and entitled "Pictures of Points Touched by Booth during His Flight from Washington, April 1865."

I took all these pictures in 1933, except a couple which are marked "bought".

1260 (The album is marked Plaintiff's Exhibit #4.)

The pictures are not in chronological order. The first is "Good Hope Hill", the next the Surratt Tavern, then the village T.B., the hotel in Bryantown, Dr. Mudd's house, Cox's farm, and Garrett's farm.

Cross-Examination of Dr. Eisenschiml by Mr. Martineau.

1263 I am also a chemist. I have an honorary degree of doctor of literature from Lincoln Memorial University.

1264 I graduated in 1901 from the Polytechnical School
1265 of Vienna, Austria. I was first employed by the Car-

negie Steel Company in Pittsburgh, was employed as a chemist till 1912.

1266 Then established a chemical company of my own, The Scientific Oil Compounding Company. I am now chairman of the Board, a position I have held three or four years. Previously I had been president. I de-

1267 voted all my time to it up to 1918.

1268 I devoted then more time to other matters. I had been interested in the subject of Lincoln's assassination and the Civil War period long before then, but haphazardly.

1269 It is hard to approximate the time I spent on this subject from 1918 on.

1270 I also lectured on history and chemistry.

1271 At the end of 1932 I began to employ research

1272 assistants, Mrs. Goldberg, Sally Owens, Sally Holmes and others such as Helen Lemberger; a man by the name of Oliver Orr in Macon, Georgia, one Janet Stine in Philadelphia; one Charles Tyngg in Washington; a girl named Heath in Burlington, Vermont, one named Ellert in Crawfordsville, Indiana.

1273 From 1935 on the number increased. I paid them all, of course. The rate varied. Some were permanently employed.

1274 In form of a book by a reputable writer, I was the first to indicate, not say, that Stanton was a partner in the murder of Lincoln.

I did not prove that Stanton was guilty. I distinctly so said.

1275 On page 438 of Exhibit I, I stated my position: "A great deal of new evidence must be brought to light before students can write a definite answer to many questions, etc."

One of my purposes was to stimulate research on that

subject, also thought and discussion, and a re-examination of that point in history.

There is a degree of probability that Stanton was guilty.

1276 I did not want the readers to believe that the evidence pointed to his guilt. I had no such intention. I put forth the facts as I found them.

1277 I do not express an opinion of my own.

1278 I was inviting public discussion and new facts. I am even presenting material that counts against the 1279 theory of Stanton's complicity. I remember the phrase that an indictment against him would not stand up.

1281 My belief since I wrote the book has not been changed, but has been strengthened, but my belief is quite unimportant. It is not a question what I believe, but what are the facts.

1283 Personally, I have not made up my mind. I am waiting for new facts.

1285 I would also welcome intelligent inferences from old or new facts.

I wrote two articles for Coronet Magazine, which dealt with Lincoln.

1286 One was called, "Could Lincoln Have Been Saved?" The other was called something like, "Lincoln's Seance." The first appeared in book form in a book called "The Case of A.L. Aged 56."

1287 It was very early in the twenties when I first conceived the notion that the conventional theory of Lincoln's assassination was not valid.

I was investigating the Battle of Shiloh, in which my father fought as a captain of the 13th Illinois infantry. From there I got to Grant, and the question arose in 1288 my mind why he didn't go to the theatre that night. Each question opened another one.

1291 I do claim that I was the first to discover that Mrs. Lincoln was responsible for Parker's appointment.

I would not express a legal opinion on what constitutes literary property.

1292 By a stretch of the imagination, I was the first to indicate that Mrs. Lincoln could be said to be under suspicion.

1293 The "stretch of the imagination" is plainly sarcastically meant. The sarcasm is directed at Millard. I do not express that suspicion. My intention was to throw it into ridicule.

1294 I do claim that the John Parker story is a very important and integral part of the thesis of my books, negatively speaking more than positively, because 1295 his absence was so carefully hidden in later endeavors. The negative evidence is the extreme carelessness with which Lincoln was guarded. I established the history of Parker and how he got into the act.

1296 I am less emphatic on how this points to Stanton; more on why he remained on the force until the moment when Stanton resigned.

I would not say that Stanton was responsible for Parker's appointment. Again negatively speaking, 1297 if any one but Parker had been on duty, Booth would have met with difficulties. Connect it also with the fact that Lincoln asked for a specific bodyguard and did not get it.

I do not think Mrs. Lincoln's being responsible for Parker's appointment is a necessary part of any thesis.

1298 Nor do I suggest that Major O'Beirne was in complicity with Mrs. Lincoln, Parker or Stanton.

1299 Millard accuses Mrs. Lincoln right in the beginning of the article; perhaps that is putting it too strongly.

1300 Eisenschiml reads from Millard's article last line on page 34,

"Everyone from Mrs. Lincoln to a gin-soaked prostitute on D. Street was at one time or another under suspicion . . ."

Millard did not get that idea from me.

1301 The only possible intimation that Mrs. Lincoln might have been connected with this thing Millard derived from me. It is, I would say, a misconception of the letter in my book about Parker's appointment.

1302 Negatively, Millard got the idea from me.

1304 Millard drew an inference which he could not have drawn without using my property.

19 (d)

1305 "That reports of Lincoln's death had been published in various papers prior to the tragedy."

1306 I found out later that I had made an error, and changed "published" to "reported". It really should be "rumored".

1308 I said there must have been others, or may have been others. This is an assumption on my part.

1309 So far as I have factual background, the only premature reports were those I mentioned.

19 (K)

1311 "Stanton's false oath about Lincoln's not being at the War Department on April 14, 1865."

1313 I prefaced the original statement with "The significance of" to have it mean that I had the reason for it in mind. Or the explanation for it.

1314 The parts of my book where this appears is on page 34. It is also in Quotes 9, 10, 11.

Reads last paragraph on page 34.

"As the conversation regarding Eckert's services could not have taken place on any other day but April 14, after General Grant's positive cancelation of his proposed visit to the theatre, Stanton's sworn

1315 statement to the contrary assumes a peculiar significance."

If Stanton had admitted that Lincoln was at the War Department on April 14, he naturally expected to be asked what happened, and he could not afford to have the conversation with Eckert put on record. There were two witnesses, Eckert himself and Bates.

The best thing for him was to deny that Lincoln
1316 was there. That statement would probably pass unnoticed.

1317 In the book I came as closely to what I intended to imply as I wanted to at that spot. On page 33, paragraph 2 (Reading)

"Stanton did make one reference to Lincoln's last visit to him . . . This is Stanton's best recol-
1318 lection of what took place. Not a word about Lincoln's request for Eckert's services, nor about his obvious disappointment in having been refused so cavalierly."

He was concealing that he had perjured himself.

I am suggesting in the book that he could have had a hard time explaining it.

1319 You might construe it as a suggestion that Stanton was implicated in Lincoln's death. All these facts are cumulative. No one link in the chain, in my belief, is proof of anything. Maybe the whole chain does not prove anything.

This link aroused my suspicion.

I left it to my readers' whether they shared my
1320 suspicion, not yet that Stanton was implicated,
1320 but that he was not particular about Lincoln's protection that night.

This is as far as this incident would lead me.

1321 You ask if Stanton might not have been just negligent. He had been requested by his superior to

let him have a major in Stanton's immediate employ as a bodyguard, and Stanton said no.

I don't remember what explanation Clara Laughlin
1322 has, but you say she contends that Stanton was a domineering sort of fellow, disapproved of Lincoln's exposing himself, and refused his request so that he could not seem to sanction Lincoln's exposing himself. That is a possible and impossible explanation. If the danger was there, there certainly was no reason to withhold the bodyguard.

1323 Millard pirates me in this way on page 106, column 1, nine lines from bottom.

(Reads): "At the War Department on which laid the tremendous responsibility of guarding the life and safety of the President theey labored mightily over tasks of vital importance.

"Or did they?"

I think Millard copied me here.

1325 I have never seen any author suggesting that there was something suspicious about this business. Nobody raised this question, so far as I know.

1326 Millard copied my question, and the
1326 significance and the inference.

1327 I was the first to ask the question and answer it, by proving that Stanton lied.

1331 19 (N)

1332 The original statement was

"The contradictory and evasive statements of Major Rathbone and Miss Harris."

1335 This original statement is not tenable and I don't intend to defend it.

1336 I intended, when I dictated this statement, to have in front of it the words, "The significance of."

1341 May I recall to you that Millard admitted that he had not known the fact of this statement even in its

original, now obsolete form. He had only known of one of Miss Harris's statements, not the other.

1342 Nevertheless, now I only claim piracy in regard to the significance of the fact, the inference from it.

1343 This matter corresponds to Quote 22.

(Reads: "What makes Miss Harris' statement . . . doubly remarkable is that it differs so radically from the sworn statement she made . . . two days later . . . she must have forgotten the man . . . completely . . ."

Millard's statement is on page 110.

(Reads): Later that night Clara Harris gave her sworn statement . . . the statement should have

1344 aroused feverish interest but it didn't for the simple reason that Clara Harris made another statement a couple of days later and left that part completely out."

The first statement Miss Harris made concerned the intrusion of a man into the box, and I believe Major Rathbone's reaction to it.

1345 If she had repeated that statement later, it would have brought to light the fact of Parker's absence or presence in the first place, and the lack of protection. In turn, it might have spread farther up. It might lead to Parker, and we do not wish to discuss Parker. That is my implication.

It is said on page 26:

"Such an investigation unquestionably would have

1346 thrown Parker's action into full relief and might have led to further disclosures of his appointment and to the still more curious fact of his immunity from punishment."

That would have lead directly to Stanton's door.

I did not intend to suggest this to the reader.

1347 I intended to present the fact and let him go on from there.

1348 I have voluminous notes on my research. They are not all facts. It was first to be established whether they are facts, rumors, newspaper stories that are not substantiated

1349 so first they have to be separated.

Then it was my job to arrange the facts into two books. That was my literary creation. But the facts alone do not make the books. It is their arrangements, and the inferences from them, and literary style.

1350 There are many factors.

The books are the result of my research.

The research may lead to facts, to negative facts, to lies, to perjuries, all kinds of things.

One has to exercise judgment as a historian and as a writer.

1351 I was not trying to prove Stanton's part in

1352 the first place. It had to develop from facts, and I let the facts lead me.

My working hypothesis to start with was that the facts about Lincoln's assassination had been very sparsely and incorrectly set forth so far, that a great many facts had not been dug out. I wanted to assemble them, and put them before the public.

1353 Some of the questions raised I answered, and some I did not, because I could not. I absolutely was not catering to sensationalism.

1354 This was a scientifically conceived book.

1356 I hinted very distinctly that Miss Harris changed her testimony, because somebody got her to do it. The somebody was not Stanton, but her fiance who was a major in the army, and susceptible to Stanton's suggestion.

1357 You ask if she could not have made a mistake in the first affidavit or that it was given hysterically. I don't think so.

The first was given on the spur of the moment before anybody could influence her. She would hardly suck such a cloak and dagger story about a man bursting into
1358 the box, and so on out of her thumb.

I would not call it perjury. She only said that her fiance's statement was substantially correct.

1359 It would require a great amount of naivete to to think that she overlooked that part.

1360 It was an evasion.

1361 This is on p. 22 in Why.

1362 I think distinctly that there is a real divergence between Miss Harris' two statements.

1363 I do claim that here is a treatment copying or language imitation on Millard's part. You said, we'll come to that later in Quote 22.

1364 He copied my inference. We have covered that, by saying, "Had she forgotten the incident? . . . Or was she quietly gagged.?"

I do not claim the exclusive right to ask this
1365 question or in anything. I claim that when people take my research, it is a legal question whether they have pirated or not.

Unless they get my permission.

19 (p)

"The statement of the coachman Burns that he had taken Parker and Forbes for a drink."

1366 I have been unable to find that Burns was ever before mentioned in this connection in any work on the assassination. Nevertheless I inserted "the significance of", because that's the burning point.

1367 The name of Burns is commonly known; that's why I said "in this connection". I dug this (19.p) out from the archives.

1368 Having dug out this information, I claim that a man has a property right to his research.

1369 Before using it, others should either get my permission or check up on the original source.

My contribution to history was involuntary and automatic.

1370 I claim [in this instance] a property right to the significance of my inference, but I do not necessarily relinquish my rights on the facts themselves.

1371 Contributing something to the world, is an indirect desire of a scholar to add to the sum of human knowledge, but not necessarily the first. The first is the thrill he gets out of discovering something new, like the man who stood and saw the Pacific Ocean which no white man had ever seen.

1374 I lost money on all of my books.

1375 What caused me to insert the word "the significance of"? One gets stale reading one's own words, and does not notice the inconsistencies.

1376 The first inconsistency I discovered was in 19 (r), "The fantastic clues discovered in Atzerodt's room". That was known to every student of the assassination and I wonder how I could have been so sloppy.

1378 I do not think a charge of pirating would ruin Millard's career, except where copyright infringements are important. It would not hinder him in writing novels and other things.

1379 Millard admitted getting something from my books, but acted in good faith, not knowing that he might have violated a law. If I were a publisher I would not think that his usefulness

1380 had ended. On the contrary it was improved now that he knew what the law was.

1381 Millard never confessed to me that he was wrong,

1383 although I had a very friendly conversation with him. I thought he was a very capable writer.

He started the conversation by saying that he had mentioned me honorably in the original manuscript and that that portion had been taken out.

1384 I thought he was in the clear, morally, but not legally 19 (q) (Quote 64)

"The exact time when Booth fired his shots." • • •

1385 Q. In other words, you claim the exclusive right to say in substance: "John Wilkes Booth shot Abraham Lincoln at 10:13 p.m. on April 14, 1865."

A. Yes.

Q. Right?

A. I do unless somebody wants to go through a similar experience and check up on it.

Q. Or unless that someone says, "By courtesy of Otto Eisenschiml"?

A. That is right. With my permission. That is right.

Q. Well, you, of course, intended to state that as a fact of history, did you not?

A. Yes.

Q. The fact that Booth shot him at 10:13?

A. Yes.

Q. Well, do we understand, then, Doctor, that as a scholar you want everybody else to go through this agonizing research you did in order to be able to say that Booth shot him at 10:13?

A. No, I do not. I want them to take the other alternative.

Q. You mean to say "By courtesy of Otto Eisenschiml"?

A. That is right, yes.

Q. Well, do you want him to come and get your
1386 permission in advance, do you want him to come and say, "Dr. Eisenschiml, please, may I say that Booth shot Lincoln at 10:13"?

A. That is mostly the way it is done, although there are times when you get the permission afterwards and take the chance of having to delete part of your work.

Q. In other words, had that been done in regard to this one fact you would have no complaint about this fact?

A. Oh, that one fact is a curiosa.

Q. Or if they had said in this piece that you are complaining about, "Booth shot Lincoln at 10:13 p.m. on April 14, 1865; footnote by courtesy of Otto Eisenschiml," that would be all right, wouldn't it?

A. I would have probably given — as a sole fact by itself and no other quotation, I most likely would have said yes. * * *

1389 19 (r)

"The significance of the fantastic clues left in Atzerodt's room."

1391 I would not accuse Millard of piracy in stating the clues. He did not need my permission for that.

1393 The essence of the significance is that Booth, in his contempt for the intelligence

1394 of the police, perhaps in a spirit of bravado left clues behind that could not even be misunderstood by any half-witted detective.

1395 These clues have been cited repeatedly and no one has ever noticed the peculiar nature of these clues or given them any interpertation at all. They just stated the bare facts.

1396 Millard pirated this theory very extensively.

1398 I do not claim any expression

1399 copying here. That is why I didn't put it into the 66 Parallels.

1414 Mr. Martineau: [summing up]

You asked the question, "What do all these fantastic clues mean?" You, for the first time, asked this.

Then you answer it: "They were to show that Booth was full of bravado, and had contempt for his pursuers."

1415 Eisenschiml: Plus the stage melodrama. That is the touchstone. If you include that, I go with you.

1416 Millard copied my idea of the significance of these clues, plainly in pirating it.

1424 19 (x)

"The significance of Stanton's delay in broadcasting Booth's name until too late to reach the morning editions."

1425 The fact of the time when Booth's name was broadcast is on record. So is the time when the morning papers came out.

But no one but myself put an interpretation on 1426 these facts. This I claim is my literary property.

1427 Millard pirated it on pp. 114 and 115.

P. 114—"For one thing, Secretary Stanton waited about 4 hours before releasing the first notice of the assassination to newspapers."

P. 115—"He waited another hour after that—until the morning paper would be well into press runs— before announcing the name of the suspect they were supposed to be seeking."

By these comments on the delay,

1428 Millard infringed my property.

I don't know that I am competent to say whether a sound inference becomes an accretion to a historical fact. In my opinion it does.

1429 I agree that if a historian draws a good inference from a fact to illuminate it, then it becomes part of a historical fact.

1431 ff. 19 (dd)

"The reasons for the premature arrest of Arnold and O'Laughlin."

1456 ff. 19(ff)

1456 "The significance of the discovery that O'Beirne—
was recalled—"

1465 ff. 20 (b)

"That the conspiracy was more wide-spread than generally supposed, and that it pointed to Stanton."

1468 The consensus among historians and writers,
1469 De Witt, Laughlin, Oldroyd, was that the conspiracy was confined to the conspirators who were put before the bar. The charges against all others blew up, and were no longer mentioned in the books.

Others expressed suspicions, but I substantiated mine.

The charges hurled at Johnson all concentrated
1470 on "Cui bono", who profits? It was a political maneuver. I pinpointed this suspicion on Stanton.

1482 I cannot agree that Millard did not pirate my con-
1483 clusion, because that is the kernel of the nut. His whole article is pointed that way. It all builds up to the same conclusion.

The sentence "That the conspiracy was more widespread than generally accepted, and that it pointed to Stanton" is as fair a summary of the condensed
1484 context of my book as you can make in a few words.

Millard gives the thing the same treatment. He asks questions, but between the lines he suggests the answers.

In the lines too, on page 105, Col. I, par. 5 from
1485 bottom—(Reads)

"But as Lincoln sketched his humanitarian plans, he knew full well that some of the smiling, attentive faces before him masked hatred. To radical Republicans like the weasel-souled Stanton, every breath Lincoln drew was anathema. If he lived through these four new years of administration, every dream and

scheme they had for raping the conquered South would be shattered."

This I would say is pretty close to pointing the finger at Stanton.

1487 Millard says "if he lived through these four years."

This is not a politcal fact, but a speculation with a very sharp point.

1490 It is a direct, veiled accusation against Stanton, and a piracy of one of my ideas. It is the kernel of my book.

1493 I put the finger on Stanton less directly than Millard does.

Martineau: To that he differs from you in what respect?

Eisenschiml: He is just putting it into stronger language.

1494 Martineau: Dr. Riddle agreed that the tenor of Millard's work was to present it as a mystery story, that he asks all these sensational questions, whereas Eisenschiml established to a high degree of prob-
1495 ability the answer, namely that Stanton was guilty. Do you disagree?

Eisenschiml: To this extent: The title of this book is a question mark, "Why Was Lincoln Murdered?" To that extent Millard runs parallel with me. I answered some questions, and so did Millard, or indicated a possible answer.

1496 Dr. Riddle also said that Eisenschiml left some questions unanswered, and carried the ball only as far as the evidence led him.

Two experts never agree on everything. Substantially I agreed with him. There are certain small deviations where I may have a different opinion.

1507 The two duplications in the 66 Quotes were due

to stenographic mix-ups, because they were not prepared at one time.

Sandberg had my permission to use my Parker material, and got it in advance. It was orally given.

1508 I suggested that he confirm this with the publishers. I don't know whether he did.

1511 My other article about Lincoln, besides the one in Coronet, appeared in the Sentinel, a weekly magazine.

1512 I did not cite my sources in that.

1513 ff. 19 (a)

I claim that I was the first person to suggest that there was a mystery about Lincoln's death. The standard books are strictly narratives, containing no hint that there was a mystery that still had to be explained. Lloyd Lewis did not write a specialized history of the assassination.

1513-1514 He treated one feature as a mystery, while I comprised not a singular event, but the entire death story. Anybody who digs into my sources and confirms them certainly has a right to say that there is a mystery.

1515 This applies to the facts or factual material in paragraph 19 (a) to 19 (ii) as amended in my affidavit.

1517 ff. 20 (a)

I claim distinctly I was the first to state that "the conventional story of Lincoln's assassination is inaccurate and that efforts were made to becloud it."

1518 The phrase "and that efforts were made to becloud it" is really the contents of my book all the way through.

1518 ff. 20 (c)

I have never seen it mentioned anywhere that the Radicals and Stanton stood to gain by Lincoln's death.

(Martineau reads from Lloyd Lewis, "Myths", Chapter "Black Easter".)

Eisenschiml: I can't see that Lewis suggests here that the Radicals stood to gain by Lincoln's death.

He means that the Radicals wanted to implicate Jefferson Davis and the Confederates.

I do not make the broad claim that no one has the right to say without my permission that Booth was being protected by some high personage.

He can say it, if he substantiates it by going to research.

Lewis himself does not suggest that Johnson was implicated. He sort of ridicules it, by saying "rumor piled upon rumor", "whispering", "gossip" etc. He thereby throws doubt on his own statements.

He puts up a straw man and knocks it down with a vengeance.

ff. 20 (e)

"Why those who wanted to pursue Booth and knew where he had gone were prevented from following him, and why the organized pursuit was intentionally misdirected."

Eisenschiml: I would not say that some subsequent authors could not discuss this. I would say that they should not state the results of my research without my permission.

The emphasis is on the two "Why's." It was not a known fact that somebody knew where Booth had gone until I described it in my book.

It is a fact that the pursuit was misdirected, but it had not been pointed out prior to my research. The telegram [on the pursuit] was on record, but no one before me showed that the directions were false.

This is in Quote 32.

1542 ff. 20 (f)

"Why the wires went out of commission?" With the emphasis on the Why I think is my literary property. No one before me gave a theory on the why.

1543 This runs through the Chapter VIII, "How the News of the Tragedy was Handled." I not only took the known facts, I presented a great many newspapers that had never been mentioned before, including such outlandish ones as the Macon, Georgia News.

1544 I presented new evidence. The second thing I did was to interpret it.

1545 My explanation was that it was done to prevent the early editions to print the name of the murderer.

1546 I claim that it was an inside job, and all wires were under Stanton's censorship.

I pointed out that if the assassins had wanted to interrupt the wire service they would have cut the wires. This had been generally assumed prior to my investigations.

1547 Not only had no one before me suggested that, but no one had questioned or investigated the motive. In this connection Stanton was a partner in the crime.

1551 Millard does more than state known historical facts. He implies very strongly that Stanton had ordered it.

1561 I made no tabulations of the difference between Millard and myself. There are differences. There are quite a few parts of his article that I would not consider anywhere infringement, where he got his in-
1562 formation from other sources. I certainly would not say that he plagiarized somebody else; and I agree that he did some independent research on them.

1563 ff. 20 (g) (Quote 28)

I claim I was the first writter to say why the news

of the assassination was not allowed to reach Richmond and other southern cities until it could be assumed that Booth had passed beyond them.

1564 The news reached them on April 17 or some time thereafter. This is the only historical fact implied in this statement. The rest is deductions and explanations.

I do not claim that I was the first to say when the news reached Richmond. There are other sources, including the Confederate War clerk Jones.

1567 I claim about all the items (a) to and including (o) in paragraph 20 of the affidavit, that the deductions, conclusions and speculations no one else has
1568 the right to print, without my consent unless he goes to the original sources.

1570 I did not spend a lot of time helping Mr. Gertz prepare the case, except for the technical help.

1571 ff. Paragraph 21

I claim Millard made historical errors. These he did not get from me.

1581 Mr. Daigh was mistaken in characterizing Mr. Mason as my friend. I don't think I have seen him 3 times in my life.

1587 So far as treatment copying by Millard is concerned I would have gone farther than Dr. Riddle.

1588 I recall some instances where I disagreed with him. For instance Quote 59.

1589 Dr. Riddle said "No internal evidence of lifting". Millard said "Stanton was late. Stanton was always late to Cabinet meetings . . . to feel the power of his position." (P. 105, Col. I, par. 5, line 3.)

1590 Eisenschiml said: "Stanton . . . usually came late. It was his way of indicating the superiority he felt." Millard closely paralleled it.

I believe the point was made this this was terse language and could hardly be done differently. I disagree.

1591 For instance: "Stanton made it a practice to make a belated entry so as to show that he considered himself closest to Lincoln." or "Nothing could show Stanton's vanity better than his habit of letting the other Cabinet members wait for his appearance." or: "Stanton liked to have it appear that he was the most important member of Lincoln's advisers. To emphasize this, he usually did not make his entry until the rest had been kept waiting."

These are some possible variations.

1592 I therefore feel that Millard got it from me, not from Gideon Welles, the original source.

1596 You asked me, "If it is a sound inference, then it becomes an accretion to the historical fact . . ." I answered "Yes, and so did Millard. That is a rather dangerous statement to generalize on. Who is going to be the judge whether it is a sound inference?"

1597 It is my position that no inference becomes itself a fact, although Dr. Riddle says it does.

1598 ff. Quote 51

Martineau: Lt. Baker quoted in a book "only one door of the barn was open".

Eisenschiml: This was not written in a book. It is in the Riddle papers in Western Reserve at Cleveland.

1599 The papers had never been sorted until I came there. I had to open the boxes.

1608 ff. Quote 13

Dr. Riddle said "A very slight coincidence of language." I say it is very pronounced. I cannot possibly say that it is slight.

1612 Dr. Riddle compared this language with that of Sandburg, and you will remember that the squawk-

ing of ducks and a couple of other things were not in Sandburg. I believe it was in Bryan, who gives
1613 me as reference, and does not quote me almost verbatim, as Sandburg does. I agree with Riddle that Millard is closer to me in language than he is to Sandburg.

1614 My next instance is Quote 27.

1615 I do not agree with Dr. Riddle that there is no significant treatment copying there.

1616 I feel that Millard must have lifted that from me. There is no original source. It is just an observation and Millard's words are a copy of my expres-
1617 sion, in addition to being a copy of my idea.

My next instance is Quote 38 in which Dr. Riddle said no language copying. I believe that is a close resemblance of language.

1618 My next instance is Quote 43, in which Dr. Riddle saw no language copying.

I claim that Millard is very much closer to me than he is to Baker. My words do not resemble Baker's.

1621 My next instance is Quote 49, where Riddle said,
1622 "There is some coincidence of language, but I would make no point of it."

1625 I feel this is significant language copying.

1626 My next instance is Quote 64.

1627 Riddle said, "The literary parallelism is quite minor." I feel that Millard here copied my language as well as my idea.

1628 I differ with Dr. Riddle here on something that has nothing to do with language. He stated that the
10:13 hour is a historical fact. I say it is not a fact, it is a theory I have established. If I only approximate something it is a conclusion, not a fact.

1629 My next instance is Quote 65, in which Dr. Riddle saw no treatment copying.

1630 I believe this paraphrases my language and parallels my ideas.

My next instance is Quote 35—

Dr. Riddle thought the semblance in the second paragraph could not have been stated very well in a different manner. This is the sentence:

Millard: "That close O'Beirne came to making his capture then."

Eisenschiml: "That close O'Beirne came to getting his man." Here are possible variations: If O'Beirne had kept up his chase only a few more hours, he would have caught Booth.

or: O'Beirne missed catching Booth by the narrowest of margins. or: Booth never knew what a narrow escape he had and so on ad infinitum.

I bought a copy of True for February 1953 on November 5, 1953, from the A.B.C. Magazine Co. in Chicago. I had my secretary order it, I paid for it.

I do not know what Ralph Newman did in connection with reprinting Why.

I do not know of my own knowledge that Millard was invited to speak before the Civil War Round Table in Chicago.

I think Millard may be sincerely and passionately interested in the Civil War, and is not just a hack writer.

Quote 1

I believe that Millard lifted this from me because when a man copies from a source which he is willing to acknowledge he will make changes only either in order to enliven or shorten it. Unnecessary changes just involve more work. Why then change "the town" to "the little village", but particularly "40 to 80 miles" to "40 miles", when he thereby ruins his argument? That indicates to me that he tried to hide his source, which he

would not have done, if he took it from the original source.

1650 Millard uses a little poetic imagination in that Quote, fictional treatment, which he did not lift from me.

1652 ff. Quote 3

1653 I said that the language the writer in the Whig Press used is confusing and might easily lead someone to believe that the note which was published on the 19th, appeared on the 14th.

1654 I feel that if Millard had looked at the original article he would not have been confused as to the date.

1655 A man looking at a newspaper for reference naturally looks at the title and the date. I don't see how it could have escaped his notice that it was the 19th.

1656 My own sentence was involuntarily obscure, because to be historically correct I tried to copy the original as much as possible.

1657 I reported the notice as a historical curiosium. It has nothing to do with adding to the sum total of historical knowledge.

1658 Any subsequent writer could use it, by either geting my permission or by going to the original source.

Wherever I quoted directly, I tried to parallel my sources as closely as I could.

1660 Whenever, unless a work was in the public domain, there was a chance that a copyright existed, I made an effort to get permission.

1661 ff. Quote 9

On a cursory glance, I would say that in this instance my language is closer to the original source than Millard is to mine.

1662 I did take Millard to task for bringing in the servant. It shows to me that he did not read the original article.

1663 I said that I was closer to the original than Millard, but when I read this over, I think that is even-steven.

1665 I do not think that Millard differs from me about the news which Stanton received. He telescoped that part, by omitting one sentence. He cut out Seward and jumped right to Lincoln.

1670 ff. Quote 17

As to 4 corners evidence of treatment copying,

1671 I only had "Scoop of the century" and "Newsbeat of the century".

1672 This is not a fact, which could be gotten from an original source, it is an observation.

Millard could have arrived at the same observa-

1673 tion, but he expressed it in exact synonyms; that is the point.

Quote 21.

1674 ff. Millard gives Sandburg as one of his sources, but Sandburg said he would take it almost verbatim from me, and so he did.

1675 It could not have been from Bryan, because Bryan misspelled Burns' name, calling him Burke instead of Burns.

Quote 26.

1676 I particularly called attention to the words "flatly refused", which both I and Millard used, but which are not contained in the original article.

Yes, I do claim to be the first to tell the Gleason story, except Gleason. It had been completely ignored. Gleason is the source.

1677 The "flatly refused" is not the whole point. We both use almost identical language, and both of us

are quite far away from Gleason's story. I did not
1678 parallel Gleason, but Millard very closely parallels me.

Quote 29.

1679 The reason I did not parallel Gobright's story is that he is a windy guy. I boiled him down and straightened him out. I only paralleled his facts, but used very little of his language, as you will note.

1680 ff. Quote 36.

1681 Here I paralleled my source in the first paragraph.

1682 Here I think there is a parallellism between my version and the other authorities cited.

1683 In the first paragraph I think Millard lifted about 33% of his language from me, beginning with "the cipher operator", and up to "Stanton".

1684 In the second paragraph there is the "order to
1685 remain on the Maryland side".

1686 This gives it away. All other authors say "he was refused permission."

1687 I infer that since he got that much from me, he
1688 may have gotten the rest of my Quote 36.

1689 ff. Quote 39.

1690 My argument is that I plucked this particular statement of Bates' out of a large number. It is strange that Millard should pick the same one.

1691 No, I did not pick it because it summarized the whole thing. It was one out of several quotable quotes, such as I read into the record, and I just flipped a coin and took that one.

I do not exclude the possibility that Millard had read the original source, but in connection with the next paragraph my argument is considerably strengthened.

1692 In regard to Browning the argument is this: Usually I would have put his middle initial "H"

there, but for some reason I omitted it this time. Then I call him "later Secretary of the Interior. He too
1693 calls him [that]. Then he quotes exactly the same quote I used, and in the same sequence in which I quoted the two.

There were a number of quotable quotes from Browning.

Millard also left out Browning's initial and calls him "later Secretary of the Interior."

1694 The whole thing simmers down to a mathematical probability or improbability, on which the Court will decide.

1695 ff. Quote 40.

When I visited the Surratt Tavern in 1933, the orchard was there, but no barns or sheds.

1696 I got my facts from an 1867 newspaper.

1697 It was the Washington Chronicle of May 21, 1867. It is not now in my possession.

1698 There is nothing about this in the Lincoln Herald, which was introduced here and marked Exhibit 32.

1699 Millard testified that he thought he got his material from Baker. He could not have gotten it from Sandburg.

1700 ff. Quote 41.

1701 My source was a book, "Baked Meats at the Funeral", by Miles O'Reilly, which Millard admitted he had not read.

1706 ff. Quote 47.

Mr. Martineau: Your point is that nowhere except in your book does it appear that Herold said, either admitted or confessed or asserted to Dr. Mudd that the reason they wanted to go to the Potomac was so they could find a boat going north.

Eisenschiml: This is correct, and I am very positive that it does not appear anywhere [else]. Other authori-

ties mention the call on Dr. Mudd, but no more.

My authorities are the original archives.

1707 That is now Exhibit 28.

1709 Millard not only imitated my language here, he almost copied it.

1709 ff. Quote 54.

1710 At the time I wrote Why I did not know of certain facts, which I discovered later, and therefore stated only as probable [that a promise of clemency was held out to Mrs. Surratt]. When I wrote the Shadow I could state so positively, due to Col. Wood's disclosures in the Washington Gazette.

1711 I think Millard lifted that from me.

1712 That hope was held out for Mrs. Surratt so she would keep her mouth closed before the trial began,
1713 is mentioned only in that paper, of which I own the
1714 only copy in existence.

This was not a historical fact in 1937, but a surmise on my part. It did not become a fact until I discovered Wood's disclosure.

1715 In Baker's book, where Mrs. Surratt's lawyers tell of hoping that she would get reprieved, (which is Millard's source), that was after the trial.

1716 Millard's expression—copying here is slight.

1717 My point is that he used my research and paraphrased a sentence.

1717ff. Quote 67.

The only source which gave Michael Henry's name is the letter to O'Beirne.

1718 I consider this a significant piece of copying. The bartender Henry is of no importance, but Millard could not have gotten the story about him from anybody but me.

1719 I don't know why I let Henry creep into my story.

1720 Historically, it is trivial.

1728 (Mr. Martineau withdraws his objections to any questions by Mr. Gertz in connection with Millard deposition).

1729 Mr. Gertz: You also had written interrogatories of Mrs. Millard and we had cross-interrogatories.

Mr. Martineau: She remembered nothing so we were not going to offer them.

1730 Mr. Gertz: I would like to offer her answers, but only as the testimony of an adverse witness.

(Discussion between counsel as to source material.)

1735 Mr. Martineau: It is understood that we will put our source material together, which will take about a week, and you can then decide what you want to do about it.

1739 Defendant's Exhibit #1 (Millard's original manuscript) is received in evidence.

1740 Defendant's Exhibit #2 (Deposition of Ralph Daigh) received in evidence.

Defendant's Exhibit #3 received. (Contract between Millard and Fawcett.) Mr. Gertz objects thereto.

1741 Defendant's Exhibit #4 (Photostat of "The Spy Who Saved the Union") is received. Objection.

1742 Defendant's Exhibit #5 (The 66 Quotes) offered and withdrawn (p. 1743).

1743 Defendant's Exhibit #6 (Riddle's notes) is received.

1744 Defendant's Exhibit #7 (identical with Plaintiff's Exhibit #7) is received.

1745 Defendant's Exhibits #8 and #9 received. Objection.

1746 Defendant's Exhibit #8 is identical with Plaintiff's Exhibit #5 of Millard deposition.

1747 *Eisenschiml's Cross Examination (continued)*
By Mr. Martineau.

1748 Defendant's Exhibit #10 (identical with Plaintiff's #13) is received. Objections as to portions thereof.

1749 This letter I wrote to Millard on July 26, 1946, does not refresh my recollection of his visit any more than I testified before. I have a hazy recollection that he visited me in my library. I thought Millard's finding a relationship between Baker and Sherman very interesting in a general sense.

1751 I recognized Millard as a historical digger, I did want scholars to dig into the problem [of Lincoln's assassination] if they would come up with new facts.

1752 I wanted to stimulate further research.

1753 I hoped Millard might do that. I said in my letter that people must be mentally and financially able to continue this search. I know now and suspected then that Millard has not got the money. He has my blessings if he finds new facts, but not with rehash. Rehash is not research and I do feel that he rehashed me.

1755 My letter was sincere praise and encouragement. I am ready to give a willing hand to the younger generation, in the hope that they will carry on.

1756 In scientific work, if anyone would dare publish something under his name as an original article, that already has been published, he would be ostracized and thrown out of every scientific society.

1757 If a scholar gives due credit to what has been written before, and uses it as a framework for further building or a foundation for a further thought, that is perfectly permissible.

1758 We have already agreed that Millard's article contains certain matters he did not get from me, but this

does not constitute research in my sense. If you go to the library and see what the other fellow has done, that is rehash. Research means digging out new material, never before known, like Millard's digging out the Baker-Sherman encounter in San Francisco.

1761 When I spoke of historical dynamite in my letter to Millard, I had not only Stanton in mind, but particularly the necessity of re-writing of the Civil War.

1763 Martineau reads from James Randall's review of Why. (Mississippi Valley Historical Review June 1937.)

1763 ff. (Questions and answers with respect thereto.)

1764-1767 • • •

1768 ff. Martineau: Do you agree with him, when he says "His [Eisenschiml's] book does contain evidence elaborately searched and ably analyzed"? (Mr. Martineau reads other passages. Discussions and questions and answers.)

1772 (Martineau offers the Randall review in evidence, and it is received subject to objection.)

1773 Martineau reads from a review by Chas. R. Wilson of Colgate University. (American History Review, Vol. 43 1937-38)

1774-1775 • • •

1777 I say in my epilogue that other historians should tackle the evidence I have submitted, and either prove the thesis or demolish it.

1778 On p. 437 I say: "A great deal of new evidence must be brought to life before students can write a definite answer to many questions that confront them in their research of Lincoln's death." There is the essence of what I mean.

1779 ff. (Martineau reads from Wilson's review.)

1780 (Mr. Gertz objects to whole line of questioning.)

1782 I agree to this part: "The point that many

strange incidents are easily explained by the hypothesis that Booth had a powerful ally in official circles."

Will you allow me to say a word? During our previous hearings the question came up sereval times, when
1783 is a hypothesis a fact? I find that I have not been consistent in my testimony. If everybody accepts some hypothesis as a fact, it is still a hypothesis,
1780 and a hypothesis can never become a fact, because when it is proven it is no longer a hypothesis, then it is a fact.

That is the difference between a fact and a conclusion. An inference is not a fact regardless of what I said before, even if everybody accepts it.

1785 I differ with Dr. Riddle on that.

1786 Everything in my two books is either A) an indisputable historical fact or B) an inference drawn from it, or C) a hypothesis suggested by the fact.

(Wilson's review is offered as evidenec and received subject to objection.)

1787 (The review of Why in the London Spectator is received in evidence subject to objection.)

1789 (Defendant's Exhibit #7 is identical with Plaintiff's Exhibit #7.)

(Martineau offers the review from the Saturday Review, March 27, 1951 as Defendant's Exhibit #11. Received without objection.)

1790 ff. (Martineau reads from it.)

1792-1806 • • •

1807 My summary, in which I claim priority for "the deductions, conclusions and speculations", does not mean that there is evidence against Stanton. It is distinctly marked as a speculation, not evidence.

1809 You are not correct in assuming that the factual

material which I claim to have discovered does more than point at Stanton. It is circumstantial, not direct evidence. I draw very much of a distinction between the two.

1811 The evidence I have presented against Millard is not circumstantial. It is not a parallel case to that against Stanton.

1812 I have a great deal of respect and affection for Mr. Millard. I think he acted in good faith, but didn't know the law. He said so himself. He thought that what had appeared in print was allowable for everybody.

1814 Mr. Gertz: It is not the province of the witness to argue the law or facts . . .

Mr. Martineau: I feel that in a way he is more qualified to judge the evidence than you or I.

Mr. Gertz: And he has reached the conclusion that there is a literary piracy. He said that.

1815-1819 • • •

1821 Martineau reads from article by Paul Angle, which is Defendant's Exhibit #7.

1822 • • •

1824 In my book I did not edit the facts, I assembled them, and omitted those which were not pertinent.

1832 I still stand by my language in Exhibit 20: My surmise that Stanton hated Lincoln, and that he and the Radicals stood to profit by his death. This last speculation is the underlying thesis of my two books. In appropriating my thesis, Millard practically appropriated my books.

1834 I present certain facts, but rather than let them float around in a vacuum, I support their validity by arguments, but I draw no conclusion. I point out

1835 the possibilities.

A thesis without arguments would just be a bunch of suspicions thrown out wild.

Millard's appropriation of my thesis goes all the way through his article:

Page 105, column I, beginning "But as Lincoln sketched" to "would be shattered". That is the essence. From then on the rest is detail.

The main theme of the Shadow alone has been described by Angle as a long footnote to Why. It gives a lot of details for each chapter, and some new slants. You'll find a chapter on Stanton, one on Mrs. Surratt, also one on

Booth's escape and curiosa.

Several chapters hang

very closely together.

I do not think I am going into that main thesis of Stanton's possible complicity, in this

book.

Stanton walks through the book to the extent that he evidently did not want the truth to come out.

Only to that extent.

Inasmuch as the Shadow has no main thesis, I cannot claim that he appropriated it. He took certain portions,

which I have indicated in the list of parallels. Numbers 1, 2, 3, 37, 40, 41, 42, 50, 51, 52, 58 and 64.

Martineau:

By taking portions of the chapter "Vox Populi" did Millard ruin the market for it? Is it not a rather unimportant chapter? . . .

Eisenschiml: I will put it this way. If a long story ends with a good joke and someone takes the joke, he took the best part. Millard took the best part.

By taking Quote 37 (or 53) he took the heart out of this chapter, its shining part.

You ask if Quote 40 is very important? It is important so far as this lawsuit is concerned. Otherwise, no. It is a nice descriptive item.

Martineau: I am trying to barge into what might or might not be fair use.

Mr. Gertz: You and I will discuss this.

Martineau to witness: Did you expect that future writers would make use of your two books in furthering human knowledge and entertainment?

Eisenschiml: In a critical way, yes.

I would follow general usage. My books are open to the public within the limitations of the law and those of usage and good taste. General usage would mean asking for permission, with or without compensation.

I agree that a bibliography or credits are not customary in the popular field.

I intended my book for serious Lincoln students—

I am not competent to say whether True is a popular-type magazine, or if it appeals to the same readership, but with a circulation of two million copies, it would hit almost every strata of society, including serious readers.

I really do not know for sure whether it destroyed my market.

I only know that my agent has not been able to place it. I am aware that Bishop's book "The Day Lincoln Was Shot" was not hampered by Millard's article. It shows that the publishers themselves are poor guessers.

(The book is marked Defendant's Exhibit 12.)

I think it is written for the popular taste * * * and I also think that events have proved this claim of mine unsustainable.

1867 Why had a circulation of about 22,000, Shadow 3600.

1868 Mr. Martineau: Are you making a claim against the publishers of Bishop's book?

Mr. Gertz: The Bishop book infringed the Eisenschiml book, and the publishers and Bishop have made a settlement.

1870 (The Blue Book for February 1955 is marked Defendant's Exhibit #13.)

1871 Defendant's Exhibits 12 and 13 received subject to objection.

1872 Motion by Gertz to strike both exhibits.

1873 Eisenschiml: No, I can't go along with you when you say that the Quotes 1, 2, 3, 37 and 40 or 41, 42, 50, 51, 52, 53, 58 and 64 were fair use by Millard of my work.

1877 *Direct Examination of Ernest Samuels*
By Mr. Martineau

My name is Ernest Samuels. I live at 3116 Park Place, Evanston. I am a professor of English at Northwestern University.

I began as instructor in 1942, and this is my first 1878 year as a full professor. I taught at the State College of Washington from 1937-39 as instructor in Business English and American literature and miscellaneous activities. I was visiting associate professor at the University of Chicago in the winter quarter of 1950. I have done teaching at Bryant and Stratton College from 1931-36.

I received my Bachelor's degree at the University of Chicago in 1933, Juris Doctor in 1926, Master of Arts in 1931 and Doctor of Philosophy in 1942.

1879 I was admitted to the Bar of Illinois in 1928. I have not practiced.

I have written two text-books and a critical biography of Henry Adams in 1948. I have written reviews
1880 on composition rhetoric and reviews of works on the Adamses, etc.

I was inducted a corresponding member of the Massachusetts Historical Society last fall.

I received the Guggenheim Award to carry on work on the second volume of Henry Adams.

1881 I believe I have become familiar with the techniques of writing a work on history. I am trained in the various techniques of scholarship.

1882 One of my painful tasks was in my work as Director of Freshman English for five years. I had to serve as a kind of court of intermediate resort for problems in classroom plagiarism and copying. I
1883 learned a great deal about the nature of the writing process and of originality. I had to determine whether students plagiarized from each other or from magazines and books.

1884 A. Well, if when confronted with irrefutable proof and the irrefutable proof that I always preferred was to have a page of the student's theme and a page from, say, a book in which the two were verbatim copies. That I have always felt was conclusive.

I made a study of the work of Millard's article in True, and read Eisenschiml's two books, Why extremely closely, Shadow less so, because I felt its bearing was not so important.

1886 Roughly speaking, I spent 75 to 80 hours doing it. I have an opinion as to whether Millard's article is an independent literary creation.

(Mr. Gertz objects.)

1887 It is.

1888 (An outline of Samuels' testimony is marked Defendant's Exhibit #1, 5-16-55)

(Objection by Mr. Gertz to line of questioning.)

You asked me for the basic principle I apply when confronting a literary work. I don't want to argue that Millard's article is a work of fine literature.

Martineau: We will concede that, I think.

A. Yes. In approaching a literary work of whatever sort the first concern, it seems to me, of the literary critic is what is the nature of this work, and that concern is with the nature of the work as a total work of art, as a literary entity, and hence you will be concerned with questions of the structure, the architecture, for want of a better word, of this literary work, and in order to determine what makes these words hang together as a literary pattern one would want to seek the theme, and as I have said, the structure, the tone.

Now, those are primary considerations, and they are based upon, in my judgment, sound common experience of the educated reader. He goes to the work as a whole poem, as a whole novel, as a whole history and so on. And any other consideration, that is, of the parts of the work which make up that whole are obviously subordinate and subsidiary to the aggregate that makes it up, and it can fairly be said, and I am here talking about basic principles that in the case of a literary work as in any other rtistic work hold, the whole is always greater than the sum of its parts.

When the structure as a whole is understood then we can understand the relationships within that work of the parts, and also we can understand what relation that work as a literary work bears to any other literary work that may be similar or different from it.

And in connection with that analysis I would like to suggest that the principles are as old as Aristotle, the question of the beginning and the middle and the end. I

have jotted down some of the principles that are familiar in American writing.

Edgar Allan Poe, who has been in a sense rediscovered as our greatest early critic, said, "Every work of art"—if I may quote this, if it is relevant—

Mr. Gertz: Of course, all of this is subject to objection so I am not interrupting.

The Witness: Yes. "—should contain within itself all that is requisite for its own comprehension," and he stressed the unity or totality of interests. "The true critic will but demand that the design intended be accomplished to the fullest extent by the means most advantageously applicable."

1894 The effect Millard has aimed at is not the effect of history or of scholarship, as in Eisenschiml's schol-
1895 arly works, but it is to titillate the reader, and although you have the appearance of historical fact, that is not the essence aimed at.

You have a mixture of fact and fictional devices which makes the thing as a whole completely different from scholarly work.

1896 To get at the character of Millard's work, first we have the internal necessities of what the editors have imposed on the writer. There is a certain kind of audience you are trying to reach to give a particular thrill.
1897 I deduced the readership from, for one thing, the advertisements of whiskey, skin bracers, tobacco, cars, firearms, etc. There would be no place in such a magazine for a work of scholarship or for foot-
1898 notes. With that object, the writer will jazz up his article, give it a sense of drama—suggesting the macabre, the irrational, the portentous, the ominous, all things that appeal to superstition.
1899 From the very beginning, there is an air of mystery, of bafflement, of confusion, of chaos, and it is

maintained to the very end.

Millard was not interested in establishing a fact, in answering questions, but rather he was relishing asking them. If a man wanted the answers, he would have to go to Eisenschiml or find the direction in which the answers would be.

Millard's work is filled with ill omen and superstition and that sort of thing.

1900 He speaks of the strange paradox at the very opening, that the more we know about the case, the less we know.

At another point he speaks of every time you come upon a mystery, it uncovers an even deeper one, and he leaves it there.

Then there are literary touches; Lincoln is assassinated on Good Friday—the rain that falls.

1901 I think Crook hears, and for this, I am told, there is no historical basis, Lincoln moaning in his sleep. And it is Lincoln himself having premonitions.

1902 Millard speaks of three ominous portents of the coming catastrophe on p. 104. Then there are patterns—Lincoln, Grant and Baker act out of character

1903 because Fate is at the bottom.

I was tremendously struck by the difference between the two works. In Eisenschiml fate is not at

1904 work, but rather is a working hypothesis is developed, rather well supported that there is a place behind all this seeming chaos—that Stanton and the Radicals Masterminded the whole business.

1905 Re-Parallels.

1906 The great danger of source hunting and parallel hunting is that you will attribute only one source to a fact or quotation.

The greatest fallacy is this conception of the single source. Sometimes the source may be in the fact that two

writers are dealing with the same circumstances, and what they will say is bound to be similar; and since we are using a common language will be frequently suspiciously identical, because the historical events dictate the treatment.

What struck me as soon as I looked at the affidavit is that there is a superficial and convincing closeness, and I confess that when I first looked at these I thought how amazing the closeness [was] . . . until one discovers that they are brought together out of the context, and that they form only a very small part of either work.

I should like to refer to a book "The Theory of Literature", where it is pointed out that the scholar, when he sees some superficial resemblance, must be reasonably certain that it cannot be explained by a common source.

In this case we have a common-place subject, one that has been used again and again.

Parallel hunting has been widely discredited recently. Parallels must be real parallels, not vague similarities. According to Alexander Lindey, (Harper 1952) "they have a limited help in plagiarism suits . . . they can clinch a genuine case of theft, but the narrow nature of their function must never be lost sight of . . . The crucial test of plagiarism must be the reading of the rival works in their entirety."

It was clear that Millard's work was not an original piece of research. He was using pieces from Eisenschiml, Sandburg, Pitman and others. Which made it one thing quite different from what is obviously a remarkable piece of historical scholarship like Eisenschiml's books.

(Pages 59 and 60 of Lindey's book "Plagiarism and Originality" are marked Defendant's Exhibit 3 and admitted, subject to objection.)

The scholarship of Eisenschiml's book Why is shown by footnotes and lengthy quotations from his sources, and documentation.

Eisenschiml's books are written for people who read a scholarly book, certainly the Shadow would not have a popular appeal. He is, it seems to me, throwing his discoveries into the common stock of knowledge . . . and expects that his facts, ideas and inferences will be used and popularized and frequently abused.

Eisenschiml's thesis is that Lincoln's assassination has never been adequately explained, and would lead a person to adopt a working hypothesis that Stanton and the Radicals were responsible.

Stanton is named about eleven times in the first ten pages, is the villain of the piece, although there is a disclaimer. It is not an indictment, but the implication was plain to me. The object of the book is to correct history.

In Chapter 2 Eisenschiml points out that the responsibility for failure to protect Lincoln lay squarely on the shoulders of Stanton. That is Chapter 4, page 31. In Chapter 5 he concludes that Stanton lied about Lincoln's visit to the War Department (P. 39). In Chapter 6 Stanton is shown to have had secret knowledge. (P. 49). On page 52 he should have warned Lincoln, but didn't. In Chapter 7, page 64, if the investigators had questioned him, they would have given him an extremely uncomfortable quarter of an hour.

In Chapter 8, he refers to Stanton as still being in power in 1868, thereby affecting Gobright's story. In Chapter 9, page 96, "The only road that Stanton failed to bar was the one by which Booth escaped."

In Chapter 10, "Did the War Department really make possible Booth's flight . . .? The evidence is pri-

1923 marily negative, "but the road was left unguarded."
Chapter 11, "Pitman's re-editing of Fletcher's story was hardly done on his own initiative." Chapter 12, Stanton's questionable behavior toward O'Beirne, preventing Booth's capture.

Chapter 13, page 115, Stanton's equivocal behavior
1924 at the news of Lincoln's death. Chapter 14, Eisenschiml reserves the question who was shot at Garrett's farm. Chapter 15, "The faked attempt on Johnson, pages 173, 174—who could have singled out Lincoln and Seward.

Chapter 16, page 177, "Stanton's novel torture to protect himself and his colleagues." If Booth was killed
1925 intentionally, Stanton and the Radicals were involved. Chapter 17. The members of Stanton's Inner Council are presented as accomplices.

1926 Chapter 18. Stanton's unwillingness to bring back Surratt, and his efforts to convict him. Chapter 19, The Assassination is only one incident in the Radicals and Stanton's struggle for power.

1927 Chapter 20. Stanton selects the judge for the conspiracy trial, who had been instructed to convict. Chapter 21. The use of the fraudulent photograph to convict Dr. Mudd. Chapter 22. The vindictiveness of the Bureau of Military Justice. "The conspiracy in
1928 higher places" point in the direction of Stanton and his group.

In Chapter 23 Eisenschiml declares only one theory offers an explanation for dividing the persons into two groups, those who had to be silenced, and the others.
1929 Chapter 24. Stanton wanted to postpone the end of the war, so as to obliterate the South.

All of this bears upon Stanton being in the central place as the villain and we are getting answers or probable answers, whereas in Millard you have none. He evades the

1930 answers.

Chapter 25. Strange things in the conduct of the war are attributed to Stanton. Chapter 26. The Radicals expected to profit by Lincoln's death, but there is no evidence of their complicity.

1931 Chapter 18. Johnson's strange patience with Stanton has remained an unsolved mystery. This hints at Johnson's implication. Chapter 29. Stanton profited
1932 by Lincoln's death. He became the de facto President.

The two works are different in character, in their direction, in the expected audience and Millard's
1933 work is importantly an original work, just as in its scholarly and historical way Dr. Eisenschiml's work is importantly an original work. Millard's hero or villain obviously is Booth, to whom he devotes a good deal of attention.

1934 I did not gather from Millard's work that Booth was just a tool of Stanton. There is an illusion to Stanton, which does not materially affect the whole drift.

1935 In Eisenschiml's work the literary art is suppressed, although very often it is clear that the literary man is at work, but he is working under a wrap.

1936 Millard's narrative technique differs from Eisenschiml's. He uses devices of dramatic preparation, so the reader will have a hint of what is coming.
1937 He also indulges in fancy and is hunting the occult, like Good Friday, and Booth having his heel caught when jumping from the box, in the U. S. flag.

1938 There is the difference in Millard aiming at the emotional effect, the entertainment, against the intellectual conviction, which is Eisenschiml's aim. The

1939 difference in emphasis, in the standard of accuracy, which makes Millard an original work.

I have examined the parallels. There is obviously no copying of language except ten words that looked like direct copying, though they might be verbal echoes.

I believe Millard consulted Eisenschiml, so I can see no copying.

Now as to common sources, these parallels would necessarily appear from any man who is familiar with the 1940 literature and used the material Eisenschiml has and later ones, like Bryan's and Lewis' books.

Mr. Gertz: That isn't any exhibit. Let's not refer to it as an exhibit. You mean a document that you prepared.

Mr. Martineau: I thought it was to be marked as an exhibit.

Mr. Gertz: Well, I am objecting to the introduction of it.

• • •

1941 (A notebook is marked Defendant's Exhibit #4, of 5/16, 1955.)

1942 Martineau: This is the drawing together under one cover of the source material referred to at our last hearing, prepared so we can find these books in evidence without handling these big books. It really should be 60 Exhibits.

Samuels: This is the sort of research that need to be done when you are working out scholarly problems. Is there a unique or is there a common source between Millard and Eisenschiml.

1943 The most important refutation of copying is the common source, hence in going through this (Defendant's Exhibit 4 of 5/16/55) it supported what was basically an impression that there were common sources.

One would wish that all people who borrowed would

give credit, but it is an almost universal practice now, and generally among scholars considered fair use to use material, so long as it is not substantially copied. In looking over these notations I was struck again and again by the fact that these adequately accounted for what, at first blush, when I was looking at the affidavit, seemed like borrowing.

Q. In other words, the impression you get after looking at this Exhibit 4 or the excerpts contained therein is that if Millard borrowed he borrowed from the common source?

A. That is true. That is true.

1944 From the acknowledgments that have been made, Millard borrowed from Eisenschiml, but that Eisenschiml was only one of many sources.

Martineau: In your opinion, would Millard, who admitted having consulted Eisenschiml, tend to take it from Eisenschiml instead of going to the original source, because of the laziness in human nature?

Samuels: Well, that depends on how interested Millard was in Lincoln material, and the indications are that he is.

1945 There were two instances where Millard copied. I should have made a note of that.

1946 When facts or ideas are contributed by a scholar, they may be used so long as they are not used in the same literary style or organization, so that there is an improper use of someone else's effort. I find no evidence of Millard imitating Eisenschiml's organization, except that the chronological scheme is followed by both.

1947 There are one or two points in the list of parallels.

Quote 10

"And afterwards Stanton swore under oath—that Abraham Lincoln had not been . . ."

"Stanton . . . testified under oath that Lincoln did not visit."

There are similarities of language but not identities.

1948 Quote 4.

"In his memoirs Grant skillfully slid over"

"Grant passed over"

The parallel here is very limited. It is a rather natural expression, and the writer could hardly know whether he was recalling. It is a copying of a fracture of a sentence, but I nowhere saw any extended copied passages.

1955 Yes, you have agreed to compensate me.

1957 I take The Shadow to be a group of related essays pertaining to problems associated with Lincoln's as-
1958 sassination. It has no governing thesis.

1959 *Cross Examination of Mr. Samuels by Mr. Gertz.*

1963 When I wrote my preliminary opinions I knew a firm was representing the defendant in an infringe-
1964 ment action. I have never seen True cited as a source in any scholarly article. I did not know it was the subject of a Congressional investigation, governmental orders, etc.

1965 My statement as to True's readership was an educated surmise. I had no first-hand knowledge.

1966 The contents of True were distinctly second and third-hand for the most part, sensational and ex-
1967 citing. It belongs to a sub-world of the sensational. A Million readers represent a pretty wide section of
1968 the society. The title of Millard's article seems appropriate to me.

1969 Eisenschiml's title "Why?" is less formal than commonly used in scholarly work. It opens the door a crack. It is exciting material, and I felt that occasionally it would carry Eisenschiml away. Some is the very same

material in Millard as in Eisenschiml, exciting events.
1970 I remember p. 5 of Why, the dramatic setting, the
1971 14th of April. There are passages like that in which Eisenschiml indulges, but it is not the prevailing temper of the work. In addition to p. 5, there are here and there a number of passages which have that kind of literary framework. It is the same kind of style. It is not all dry as dust. It exploits the interest of the material, but that exploitation is always subordinate to the historical point.

1972 The fictional picturization of the death scene in True impressed me.

1973 Mr. Gertz: Do you know who that man was who is protruding from the box?

1974 Samuels: Was it Major Osborne?

Gertz: No.

I don't know of any errors in the appearance or position of that major.

1976 I am not sure whether Lincoln was slumped over as in the picture. On p. 36—the photograph is not
1977 toned up. I believe it took four or fewer soldiers to carry Lincoln's body.

1980 There is pretty respectable advertising in the February 1953 issue of True. I think there would be a reasonable difference of opinion as to its character. It is of lower grade than in the so-called quality maga-
1981 zines. There is much of it that would also appear
1982 in Life, the Saturday Evening Post, Harpers or At-
1983 lantic. On the other hand, there are kinds you would not find in them.

1986 I had nothing to do with the preparation of Exhibit #4. I read the greater part of it, some more
1987 closely than others. I examined every sheet, and read
1988 most of it. I did not actually check if the first entry from Badeau's "Grant in Peace" was accurately

transcribed, or if it was in context. I do not know if Millard looked at the works cited in Exhibit #4.

1989 A. Well, I attempted to do that and I discovered that there were references here to exhibits that I did not have, so that after a time I gave up, and read them with a view to informing myself, since this is a considerable amount of research, on what common sources would have been available, and I was assuming that Millard did have access to these sources, also.

Now that, of course, was simply an assumption that I was making.

Q. In other words, you did some random rather incomplete sampling?

1990 A. So far as I was able to, because I didn't understand, for one thing, the numbering. You will recall that in the Plaintiff's Exhibit, the first—there are forty quotations from "Why", and then there are another group from "The Shadow," and the numbering —I wasn't able to follow through whether the numbering adopted here was a continuous one, you see.

Q. In other words, you didn't actually make a complete comparison?

A. I did not make a complete, I made only a partial.

Q. What you would call a sampling?

A. Well, as far as I could go.

1990 Mr. Gertz asks witness, where in Exhibit #4 is a reference to Quote #2 in Plaintiff's affidavit, then 1991 extends the request to Quotes 2, 3, 10, 12, 17, 21, 22, 23, 30, 32, 34, 40, 43, 44, 47, 48, 49, 52, 63, 65, 67.)

1993 The first quote was #2. I would have to go through 1994 rather carefully since I did not prepare this.

Mr. Gertz: Is it not a fact that none of the Quotes I listed are referred to in any manner, scope or form in Defendant's Exhibit 4?

Samuels: I am not in a position to answer without

study. I was struck by the amount of material that was outside Eisenschiml's book.

1995 The very first time I saw those (66) parallels I fell into the fallacy of being amazed by their similarity.

What amazed me was that in looking at these par-
1996 allel columns, were the apparent resemblances, and it was not until I went back to the books that I realized how the context completely altered the bearing of these quotations. I was surmising or guessing that Millard read other sources.

1997 Subject to the qualification that I am not an ex-
1998 pert in the field, I will grant you I gather that this hypothesis of Eisenschiml's that Stanton was implicated in Lincoln's death is a novel one.

It does not appear in the Millard article. That is, there is a fragmentary allusion.

(Mr. Gertz asks witness to show where in Exhibit 4 there are references to the sub-paragraphs of paragraph 19 of the affidavit: C, D, M, N, P, Q, Z.

1999 And references to these sub-paragraphs of paragraph 20: F, G, L.)

2000 These parallels though taken from Eisenschiml do not constitute a material part of the article.

I am not an expert on the death of Lincoln.

2001 My familiarity with the Civil War and Lincoln stem from my preoccupation with the Adams family. I read Why more than once, and of the Shadow the relevant chapters. It was a very interesting example of
2002 scholarly method.

I have never gone into the question of the exact time of the shooting. I thought it was an amusing part of Millard's pattern, the superstitious twist, 13 being an unlucky number.

The assassination did take place on Good Friday and I assume it was in fact a cloudy and rainy day.

2003 And it is true that Lincoln did in fact have various dreams about which he talked.

I don't think he moaned in his sleep. I don't know that any scholar has so written.

2005 Mr. Gertz: Does not Eisenschiml dwell upon the Good Friday, and the omen and a whole series of things the way Millard does?

Samuels: He is not taking it as omens, does not exploit them.

This does not indicate that Millard is not really the kind of scholar who would go to the sources. It is a question, what is a source.

2006 Eisenschiml would try to go to documentary sources, wherever possible. For the purpose of this Millard article it would be sufficient to go to secondary sources, De Witt, Eisenschiml, Lloyd Lewis.

Those would be his chief sources, although he may have been interested in original material too.

2007 As to paraphrastic copying, that raises a question of judgment, how close a paraphrase would be.

2008 Where the paraphrase is fairly close, and the intention felonious, I would feel that it was improper.

To a limited degree I would make parallel columns in my detective work.

2009 The standard I would usually follow is, was there extensive copying, so that without it there would be no theme.

2010 Aside from parallel columns, before one looks at
2011 a particular passage, you read the whole thing.

You ask if I would consider a paper copied, if some passages are clearly copied, and in addition others are not.

2012 I would tell the student "Use quotation marks and cite the source."

Millard uses that in his article, "as so and so says."

2014 (It is stipulated that, subject to verification, the paragraphs, quotes and sub-paragraphs listed by

2015 plaintiff as being omitted from Defendant's Exhibit 4 of this date were in fact omitted therefrom.)

Quotes 1, 2 and 3.

2016 You ask if I think it significant that Millard quotes the same instances of premature publication in his quotes 1, 2 and 3 that Eisenschiml does. I would say taken by itself I would regard it as having some significance.

2017 I would want to see if this is the sole source and these three the only ones cited in other works.

I don't know if they were cited in other works. I don't know.

My previous answer covers whether there are any sources other than the one cited first by Eisenschiml.

I do not know if the Middletown Whig Press car-

2018 ried an article in regard to the assassination.

I do not know whether the paper carried the news on April 14, 1865. I assume Eisenschiml's statement is based on research, and Millard's on secondary research.

If I knew that the paper did not carry the news on April 14, I would say he was romancing.

I don't think that he was misinterpreting Eisenschiml.

2019 If Millard misread Eisenschiml, you ask, would it be in my judgment, a good indication that he had

2020 copied or utilized Eisenschiml's work, I would hesitate to say that it was conclusive. It would give me pause.

Quote 4.

You ask if I were told that Millard admitted that Eisenschiml was the first to call his attention to the material therein, would it influence my opinion as to whether he copied Eisenschiml.

2021 I think it would have a bearing, yes. When I said copied, I am using that loosely, that he was indebted to Eisenschiml because it is not a direct copy.

2022 (Witness reads the two parallel Quotes 4.) There is a similarity, and it might have come from Millard's having read Eisenschiml's book, but there are

2023 other possibilities. He might have gone to the original source, Grant's Memoirs.

2024 Mr. Gertz: In Grant's Memoirs, Grant does not say that he skillfully slid over the incident, does he?

Samuels: It is quite possible that this is a verbal echo.

2025 It may well be that one is taken from the other, that for these specific details Millard may be directly indebted.

2026 These details do not affect my analysis. There could be many passages copied.

Even if assuming that all 66 Quotes were copied, the Millard article would still be original, overall. These parallel columns are a classic illustration

2027 of the vice of the parallel column.

Mr. Gertz: How many instances would it take to persuade you of overall copying?

Samuels: There is obviously no formula. You can have ten thousand similarities of words. The important thing is, do they fall into the pattern which constitutes an independent work.

2028 If another expert reached the opposite conclusion, it would not be a sound opinion.

2034 You are asking me to pass on the competence of Dr. Riddle.

2035 I find it difficult to answer that question sensibly.

2036 Mr. Gertz: Now if a court of law has decided that the quantity of copying has nothing to do with 2037 the question of infringement, would you say the Court is wrong?

Samuels: It would certainly be unwise in every case that a Court would be justified in ignoring quantity. There are cases—and this would be one—in which 2038 the mere quantity would not be controlling.

If Millard did a good deal of copying—that is a good deal of indebtedness which he has not acknowledged, it would not overall be evidence that his work was not original.

Mr. Gertz: Is it not possible in your judgment for a man to copy substantial portions of another work 2039 and yet in other portions of his work be highly original?

Martineau: I will concede that it is possible.

Samuels: Yes, there certainly is a possibility.

2040 Mr. Gertz: You know that, legally speaking, you can be guilty of infringement even if there are original elements in your work, as long as there are portions copied from another work?

2041 Martineau: We will concede that under certain circumstances that could be. It depends on how much was copied, and what proportion it bore to the whole, how important it was, etc.

Mr. Gertz: Referring to Millard, will you give me in categorical fashion what you regard as the highlights of his article?

2042 Samuels: The theme of the article is the mystery,

2043 to a degree supernatural, that surrounds the assassination, and that its purpose is developed by exploiting them—the elements of horror, the foreboding, the evil fate which accompanied the downfall of a great man.

2044 (Gertz reads from Millard article, p. 105, col. 1, par. 5.)

2045 Yes, this is positive in tone. It is not simply asking questions but making pretty definite answers and conclusions. There are a number of references to Stanton.

2046 Yes, there are a very great number of references to Stanton in Eisenschiml's book.

Yes, there are more references proportionally to him in Eisenschiml's book, more importantly. In his book Stanton and his clique simply dominate the book, but it seems to me he should have done more with Booth.

Yes, there are references to Booth in Eisenschiml's book.

2047 But not in the same way. He is not treated there as a kind of hero.

No, I do not know any source for the material in the paragraph read before other than Eisenschiml.

2048 It seems to me that Welles tells of it—the struggle between Stanton and Lincoln is the commonplace of history. If I recall anything about it.

Gertz: I am talking about the specific reference to the effect that Stanton and the Radicals desired Lincoln's death.

Samuels: It seems to me that it would be a safe statement for anybody to have made.

Gertz: Will you cite me one work in which that
2049 conclusion is stated other than Eisenschiml's?

Samuels: I could not state that as a fact.

2050 I would not say that the 66 Quotes represent a
2051 substantial part of Millard's article.

It would be impossible to work out which portions I regard as more significant in Millard's article than those 66 Quotes.

The article is a complete article—organic.

2053 Taking p. 195, either qualitatively or quantita-
2054 tively—qualitatively the question arises whether the
2055 parts have an indispensable relation to the test.

Well, the data have a relation, and the article would be altered, if these facts were missing. Whether the alteration would be substantial, I doubt.

I would say the story of John Parker is a significant element in Re Millard article.

2059 You asked me about the Parker passage, whether it formed a significant part of the page on which it appeared.

2060 This is predicated on a kind of quantitative theory.

I certainly should have added that this analysis would not admit either of a quantitative or qualitative because the terms are misleading.

2061 Parker is an actor in a drama, and the one person
2062 who stays in character. That is one of the values of the use of the Parker episode. One has to consider the piquant details about the bawdy house, etc. and also the purpose of Eisenschiml's treatment. He wanted
2063 to correct history, whereas in Millard's case Parker's significance is that the safety of so great a man should depend on so weak a vessel. In the Lincoln assassination story Parker is one of the important figures.

2064 Some of the material lends color to Millard's article, one of its functions.

I was paid a fee for my preliminary opinion and was paid or promised a fee for additional services in developing my opinion and testifying.

I am to be paid for my time on this matter.

2064 ff. (Testimony as to meeting with counsel, hours, etc.)

2069 Mr. Gertz: Q. Now, when you sent this letter of
2070 December 5, 1954, had you read the Millard article in full?

A. Yes. Yes.

Q. And had you read the Eisenschiml book "Why Was Lincoln Murdered?"

A. Yes.

Q. But you had not read "In the Shadow of Lincoln's Death"?

A. No.

Yes, I did no research on the assassination spe-
2071 cially before writing my letter of December 5, 1954, but not for this purpose of writing it. Nothing extended.

2072 Re—Defendant's Exhibit 4, with the heading "Source Reference Data Sheets";

2073 I was acquainted with some of these sheets with varying degrees of acquaintanceship, when I expressed my opinion [on copying], and I am acquainted with. In some instances I am pretty well acquainted, in others not so well, and still others not at all.

2075 My knowledge whether Millard read or consulted any particular book in their Exhibit 4 would come secondhand. I never met Millard.

2080 I cannot categorically answer the question whether works cited in Exhibit 4 have reference to the Quotes that are indicated at the bottom of the respective pages.

2081 In some cases I took the page and compared the excerpt with the Millard article and Eisenschiml's books. I started out attempting to do that, but I did not understand the numbers, but in the case of a few pages I expressed my surprise at how full the detail was. I had

not known that such sources might have been used for Millard's article. In quite a few cases I did not make the comparison. I suppose in most I did not.

2082 I did not have the book and the article before me, except in mind and recollection.

I did not look at Exhibit 4 until a few days ago, although it was, so to speak in my custody for about five weeks.

2083 It appears to me, simply on examining the documents, that some of Millard's research was done using Eisenschiml's books. I inferred that some of it was as a historical source.

2084 In a few cases there was at first glance an apparent similarity of phrases.

There were some similarities of ideas, of factual detail, so that it could appear that Eisenschiml's work had been used as a literary source, as a historical source.

2086 I have never before appeared as an expert in an infringement case, nor have I written anything on the subject.

In order to detect copying in some cases I use 2087 specific tests, in others I go at it backwards, which I felt is the approach through parallels. However, once you have suspicion concerning two works, then you read them to see what the configuration is.

2088 The configuration is made up of very complex factors—the overall theme, the tone, the structure, the patterns, those are the essence regarding the nature of both works. Much of that is an act of judgment, based on a tremendous amount of reading, because you need taste.

This gives you the judgment as to whether there has been substantial imitation.

2089 Then you begin looking for specific passages, which would show, for example, that the writer has had access to something else.

There is a rhetorical purpose and an imgainary one.

First, you have to determine the genre: is it straight history, is it a combination of fact and fiction, is it
2090 poetry? Each one would have its own principles.

I cannot answer categorically whether I have ever been wrong in my judgment.

It would be fair to say that sometimes I changed my mind.

Gertz: Suppose that Millard prepared, after suit was filed a set of about 60—3x5 cards to correspond
2091 with the 66 Quotes, and on each card placed what he says he recalled as the source used by him, and none of them contained any reference to Eisenschiml, but at a deposition later, he admitted that he derived some of his material from Eisenschiml, would you consider that significant?

2092 Martineau: Subject to verification, I will admit that none of the Millard source cards contained any reference to Eisenschiml.

2094 Gertz: Assuming that Millard prepared about 66 cards for preparation in testifying, and that on each card he placed what he said he recalled as his sources, and that none of those cards had any reference whatso-
2095 ever to any writings of Eisenschiml, and that he testified, both on direct and cross-examination that he did consult these writings—would you regard that as significant in determininig whether he copied from Eisenschiml?

2096 Samuels: I think that question is confused by the word "copied".

2097 If a student of mine did something like it, I would ask him, "Why did you omit listing your authorities?" And I would be interested to know his answer. He may simply have forgotten.

2098 I have not seen Millard's deposition—nor that of

Dr. Riddle, nor that of Eisenschiml or Naughton,
2099 nor any of the testimony in this case.

2101 Gertz: Suppose that there was a collection known as the O'Beirne papers, which was in the possession of Dr. Eisenschiml, and which contained material never published except in the Eisenschiml books, and suppose that Millard never saw that collection, and that in the Millard article language from this material appears.

2102 Would your opinion as to the originality of Millard's article change?

No, it would not.

2103 Q. In other words, even if Millard took material from the Eisenschiml books based upon the O'Beirne papers you would still say that he was original?

A. That the article was an original composition.

Q. You mean overall or in detail?

A. No—well, overall. The question of what—of the relevancy of the detail is something else.

Q. In other words, you are ignoring detail, isn't that true?

A. No, I am not. No, the details play a part in the composition.

Q. Would you say the passage—

Mr. Martineau: Let him finish.

Mr. Reuben: Let him finish for once.

The Witness: The details play an important part in the composition because you can't have a composition without the details, but I would like to insist that the whole is greater than the sum of the parts, and an important question is, how is the detail used.

Mr. Gertz: Q. Let's give this example: Suppose in detail a literary production in each of its component parts is taken from other writings—

A. In every—

Q. Yes.

2104 Mr. Martineau: From a number of other writers, Elmer?

The Witness: You mean something like Burton's "Anatomy of Melancholy"?

Mr. Gertz: Q. Suppose an article in a magazine, everything in the article, you might say "This is taken from Sandburg, this is taken from Eisenschiml, this is taken from Lloyd Lewis, this is taken from XYZ."

A. You mean is it conceivable that there can be an original article under those extraordinary circumstances?

Q. Yes.

A. It is conceivable.

Q. But unlikely?

A. Well, not unlikely because men have—great men have made great reputations, and Burton's "Anatomy of Melancholy" is one of them, an extraordinary compilation, and considering the amount of stuff that Lawrence Sterne poured into "Tristram Shandy"—

Mr. Martineau: Elmer, in your question did you assume—see if I understand it correctly—that the taking from these different authors was a verbatim taking

2105 and it was just sort of assembled together, put together.

The Witness: That is what I assumed.

Mr. Gertz: In some instances were verbatim, in some instances paraphrased, in some instances—

Mr. Martineau: Just so he understands the question.

Did you understand the question?

The Witness: Well, conceivably, yes, under those circstances.

2105 I don't think I was consciously hunting for similarities or dissimilarities between the two author's works.

2106 I did look for similarities of language. There were

similar details.

2108 There are two paragraphs that are pertinent, one is paragraph 19, one 20 [of the plaintiff's affidavit]. The difference between these two paragraphs is misleading.

2109 Gertz: I asked you to list the similarities between the Millard article and the Eisenschiml books, both of language and substance.

Samuels: Of language I found extremely few,—

2110 that went beyond accidential ones.

2112 I would say that there are similarities. I would say that most of these in paragraph 19 indicate similarities, but I would reserve the nature and what they signify.

2113 In 19 (A). That there was a mystery about Lincoln's death. There is a factual similarity.

19 (B) That Parker was a key figure, there is a similarity, appears as an actor in both,

2114 19 (C) that Mrs. Lincoln was responsible and that [premature] reports of Lincoln's death had been published in various papers.

If there is an indebtedness here [it] is one of fact, because the language is not copied.

19 (E) The advertisement in the Washington newspapers. I believe that is shared information.

2115 The significance of the note the messenger handed to Grant.

2116 So far as paragraph 19 and 20, historical facts, conclusions or surmises goes, there is a considerable amount of similarity.

2117 In 19, the greater portion are historical data, shared by two or three works.

The significance is something else, the use made of

2118 them is frequently different.

Eisenschiml dismisses the pre-publications as drivel, whereas Millard simply speaks of a strange

wind that swept over New England. He uses these basic facts, to provide an effect of strangeness, of the occult.

The raw facts are shared. How they are used is wherein the originality of Millard and that of Eisenschiml separately consists.

2120 Paragraph 20 differs from paragraph 19, the first referring to facts, the second to deductions.

2121 The interpretation of these deductions are, in my
2122 opinion, different. Millard rather carefully avoids answering the kind of "why" that is so much of Eisenschiml's essence.

There is one point I know I would question. I would question 20 (D), that Booth was protected by some high personage and that his road of escape was known
2123 and kept open.

2124 The literary significance in all these cases is special in Millard and special in Eisenschiml. Millard makes a different literary use of them, in most cases.

The 66 Quotes.

2125 In going through them, I can safely say that I am impressed by a similarity of factual details. It could well have been that Eisenschiml's work was a source for the underlying basic fact, not the interpretation or the particular use. The language is remarkably different, when you consider how similar the facts often are.

2126 You ask if in trying to reach a judgment, I consider paraphrases, abridgments, imitations. That would enter only at a certain stage. Having satisfied myself that one work is an imitation of another, then I would seek for details.

2127 Efforts at concealment is one of the most difficult questions in literary study. I do not consider it conclusive proof. It would certainly make me suspicious.

If a man deliberately, with intent to deceive, denied, then my suspicion would be up, but often you can account for what seems almost identity of language.

2128 Gertz: If a writer is inaccurate in quoting or using a source, does that not show that he is slovenly or else trying to conceal copying?

Samuels: Well, to err is human. It would be indicative that he has been careless in that one respect. I doubt whether it would be a fair inference of slovenly research.

2129 Millard was trying to write fact fiction, a kind of hybrid genre.

2130 You ask whether it is right to copy from somebody else without permission and acknowledgment. May I change that to "borrow". Good scholarly practice demands it, but in fact, it is just too expensive.

2131 In popular writing, the practice is never to use
2132 footnotes.

2133 Q. You see nothing morally or legally wrong in taking substantial portions—

A. Well, you don't want me to indict my own civilization. I have felt privately that I wished that as an author people would give me credit. Even scholars—I have resented the fact that other scholars—they are nice fellows, but why didn't they give me credit? But it is part of the practice. No great harm is done.

Q. In other words, you say it is okay because people do that, they habitually steal?

A. Because it is a universal practice and the harm is negligible.

2134 If Millard had admitted that in several instances he took his material from Eisenschiml and if the internal evidence shows that in other instances he did not go to the source, but took his material from Eisenschiml,

and if he testified that he would not think of disputing Eisenschiml's word, I don't think one can make a legitimate inference from that. I may say that I think every historical conclusion is a historical fact. That Lincoln asked that Eckert be assigned as his guard and Stanton refused is a historical fact.

Gertz: Suppose that Stanton gave a reason for his refusal and Eisenschiml said that was not the reason at all. Is that a fact or a hypothesis?

Samuels: If the hypothesis is sound, one begins to treat it as a historical fact.

Gertz: If George Bryan says that Stanton's reason was that he wanted to discourage Lincoln from attending the Theatre, is that a different explanation?

Samuels: Even though these two explanations are different, and contradictory, they both are historical facts, from the view of history. I consider a hypothesis a fact, when the facts are the data of history.

I have been looking at Plaintiff's Exhibit #20. I get the drift of it.

You ask if the summary of Chapter III in Why at the bottom of page 2 and the top of page 3 of Exhibit 20 is accurate, and also the parallels between it and the Millard article.

The first sentence seems correct to me; the second, as to it never having been published before, I assume is true.

I don't believe the third sentence is true. ("Millard's sequence of incidents is somewhat different from mine, but his build up closely parallels mine.")

There is not enough there for me to form an opinion.

As to the second paragraph, I don't agree. Millard does not begin his article with identically the same premature notice.

As to the rest of the paragraph Millard's account of Parker's career may well have been drawn from the facts of Eisenschiml. The use of them is quite different. So far as this is a summary of basic facts, there is a similarity.

By basic facts I mean, for example, that Miss Harris' testimony was contradicted by Major Rathbone. It may be true that this was discovered by Eisenschiml, and thereby became a matter of American history.

The suspicion that the witnesses had been influenced by the War Department is not adopted by Millard, I believe. In Chapter IV there are similarities of the historical data.

Quote 13

Most of the data appear in both works, and I would say there are similar words, but that there is a deliberate pattern recognizable to show copying is open to question.

On page 108 in Millard I see the words "profane, coarse and insolent language". In Eisenschiml: violent, coarse and insolent language. That is similar, yes. In Eisenschiml it is not under quotation marks, this is narrative. It is possible that this could be stated without using practically identical language.

I believe this is only one of many examples of trivia that occur through all writings, popular and scholarly. My personal morals would be to use quotations.

This kind of verbal echo is very common. This does not make it right, but it also is not wrong, unless it is the soul of the thing.

I do not believe that Millard's use of the Eisenschiml Parker material is a paraphrase. Certainly it is not a

close paraphrase. The facts are not related in the same order.

2172 (Samuels is asked to read Quotes 13, 14, 15, 34, and 34A, all relative to Parker.)

2173 I don't think Millard paraphrases Eisenschiml. There is an appearance of paraphrase. What Millard
2174 has done, is to take the picturesque, and the language he sometimes uses is more effective in dealing with the facts for his purposes.

I don't know whether it would be a correct description to say it is rather a loose paraphrase of the chapter. In a paraphrase, as I understand it,—

2175 Q. Can't there be a copy where some sentences or paragraphs or pages are inverted?

A. No, I wouldn't call it a paraphrase if you rearrange the materials, because then you change the relation of the parts to each other.

Q. So that all a person has to do to escape the charge of copying is to change the paragraph order or the page order?

A. No, the skillful rearrangement of material, the rephrasing of it, it seems to me, makes it a new work for the purposes we are considering here.

Q. All right. Still asking about the Parker material, will you set forth—take all the time you want—any material in the Millard article with reference to John Parker which is not also contained in the Eisenschiml books?

A. That is an interesting question.

2176 Q. All right, then I will phrase it this way and you listen to the question and answer it: Assuming that the substance of everything about John Parker contained in the Millard article appears in the Eisenschiml book "Why Was Lincoln Murdered?", and assuming further that there is nothing about Parker that ap-
2177 pears in the Millard article that does not also appear in the Eisenschiml book, would that be significant to

you in determining whether or not there is copying?

The Witness: Would this answer your question, Mr. Gertz: that it appears to me that Millard is indebted for most if not all of these factual details to Dr. Eisenschiml's book. Is that what you were asking me?

Mr. Gertz: Q. Yes, I am asking you, and I am not putting words in your mouth, wouldn't that be significant to you in determining whether or not there was copying?

2178 A. Only if it was evidence in the first place that Millard's article was a plagiarism of Dr. Eisenschiml's book, that is, we have come full circle.

Q. Yes. Let me see if I understand you. I don't want to burlesque what you say. In other words, you reach a general conclusion first that overall there is not plagiarism?

A. That is, in those respects which determine, shall we say, the individuality of the entire work.

Q. The work in toto.

A. Yes.

Q. All right.

A. Then the next—

Q. Wait. Then having reached that conclusion you say that it doesn't make any difference how the details are?

A. From the point of view of plagiarism that is precisely right.

Q. All right, I just want to make sure I understand you.

A. From the point of view of plagiarism once it is clear that a comparison of the two works or the three works in the main lines and those details that I mentioned, that they are different works, one is original, then

2179 the so-called parallels become interesting as to the methods of research, as to the methods of research, but that is an academic and purely a literary question.

Mr. Martineau: And not legal or what?

The Witness: That is, I don't think it throws any particular light on whether plagiarism has occurred.

Mr. Gertz: Q. Well, you follow me now. I am not trying to put words in your mouth, and if you don't understand me, halt me. Assuming then, that for whatever your reasons you have reached the general conclusion that a work is in toto or by and large—

A. That is right, substantially.

Q. —an original work, then you would not revise your opinion even if you found scores of instances of similar or the same language?

A. Well, the number, I would say, is immaterial. It is their nature. It is their nature.

Q. I just want to make sure I understand you.

A. The number is immaterial. I would say that the canon in literary study is the one I have stated.

Q. And that is the basis upon which you reach the judgment in this particular case?

A. Yes.

Quote 3.

Millard may well have misread Eisenschiml's book. It is probable. It seems very likely that Millard did not go to the April 19 issue of the paper for his information.

Millard article has these angles: A, chaos, confusion, mystery, bafflement, horror. B, the occult, fate.

Eisenschiml does not accept the occult. He brings in the superstition, but it would reflect on his scholarship to say that he has taken the same—

(Gertz reads from page 5 of Why . . .)

Gertz: Isn't that just about the technique of Millard?

Samuels: That great events cast their shadows before is rhetorical license, but to suggest that the occult becomes

the controlling theme is an insult to Eisenschiml. It is one thing to use this rather dramatic introduction.

Within the limitation of scholarly methods Eisen-
2188 schiml has tried to make his book exciting. Millard was not so restrained. Oh, he gives one hint to the supernatural but it is not the center of his book.

(Gertz reads from page 30 of Why)

2189 Gertz: Is not there a lot of suspense in that?

2190 Samuels: There is suspense, but not like Millard's.

(Gertz reads from page 67 of Why)

2191 Gertz: Does not that hold suspense?

Samuels: There are many examples of suspense in scholarly books.

(Gertz refers to page 40 of Why, "Premonitions vs. Secret Service Reports".)

Gertz: That chapter is full of premonitions?

Samuels: Yes, they are taken as reports, but Eisenschiml takes no stock in them. Millard does.

2192 (Gertz reads from the chapter.)

Samuels: I have already testified that much of the occult and superstition is reported by Eisen-
2193 schiml, but Millard uses it as a theme, whereas Eisenschiml is referring to it in his analysis of his characters.

(Gertz reads from pages 3 and 4 of Why.)

2194 Samuels: This is an effective beginning, but not the type that Millard did. In handling his material, Eisenschiml has these touches but they do not control.

(Gertz reads from pages 43 and 44 of Why.)

2195 Samuels: This is not the same kind of fatalistic attitude that Millard had, Eisenschiml handled the material with tact and discretion, Millard almost frivolous.

2196 (Gertz reads from page 137 of Why.)

Gertz: Isn't that the same kind of fatalism?

Samuels: No. I find these flourishes interesting but it is not the heart of the book.

2199 ff. Testimony about Defendant's Exhibit 4 of May 16, 1955.

Quote 64.

2200 There is no reference in this excerpt from Bryan's
2201 book, that Booth fired his shot at 10:13 P. M. I would add that presumably the historical fact Millard took from The Shadow.

2202 Quote 24 (19V).

2203 I see nothing about the police blotter in this except from Bryan.

(Crook's "Through Five Administrations" is submitted to witness.)

2207 I do not see Crook's "Through Five Administrations" as a direct source for Quotes 13, 14, 15, certainly not as a quotation.

Re—excerpts from David M. DeWitt compared to paragraph 19, sub-paragraph 19 (R).

2209 There is no resemblance, no similarity of language, or substance.

2210 There is the statement of concealment in DeWitt,
2211 of the weapons being a mere blind to make it appear that the Vice President was the intended victim.

Re—affidavit 20 (O) compared to pages 174, 175 in Exhibit #4.

2213 Samuels: I don't see Lloyd's name on pages 174, 175.

2214 Re 19 (T) vs. pages 246, 247 in Exhibit 4.

2216 [Willful changes in the Official Record] do not appear on the page here.

Re Quote 50 excerpt on page 83 of Exhibit 4.

2217 Samuels: DeWitt says nothing about additional doors on all four sides.

There is nothing in DeWitt about the door being fastened on the inside.

Re 19 (A), 19 (F) 20(B) 20(I) and 20 (J).

(Excerpts from DeWitt, pages 172, and 173.)

19 (A).

(Mystery about Lincoln's Death).

Samuels: DeWitt's passage refers to a petition for Mrs. Surratt.

Samuels: 19 T says that the official record of the trial—

Gertz: Willful changes made in it by Pitman and—

Samuels: The only reference to the record in DeWitt in this passage is the omission of a petition. He says nothing about other changes.

20(A).

(The inaccuracy of the conventional story of the assassination.)

There is only inferentially something in this excerpt from DeWitt with respect to efforts to becloud the story. There is no direct statement [that part of the record was suppressed].

20 (B) and (C).

(DeWitt excerpt, page 272.)

There is something in DeWitt about the conspiracy being more widespread than generally accepted, by implication.

Gertz: The incident referred to by DeWitt occurred over two years later?

Samuels: It would not relate except as it would bear on Eisenschiml's thesis that Stanton and his party sought

to remain in power.

2232 Q. Yes, but pretty far-fetched, though, wouldn't it be?

A. I wouldn't say so. It is—

Q. All right. Let me ask this, then: What language in the excerpt that we have been mentioning from DeWitt would indicate that DeWitt was pointing out directly or inferentially that the conspiracy against Lincoln which culminated in his death in April, 1865 was much more widespread than generally accepted?

A. Only to the extent that there is the implication, as I see it here, that Stanton was involved—

Q. What language says that Stanton was involved?

Mr. Martineau: He just got through giving it to you in his previous answer.

Mr. Gertz: Q. All right, will you give me the language in this excerpt from DeWitt which indicates in your mind that Stanton was involved in the assassination conspiracy of 1865?

Mr. Martineau: I submit, your Honor, that the witness has given the answer at quite some length about two minutes ago.

Mr. Gertz: I didn't hear it then. I would like to hear it.

Mr. Reuben: He can read the answer, then.

2233 The Master: He can repeat it.

The Witness: That the excerpt here would indicate that Stanton faced the same problem—

Mr. Gertz: Q. I asked you to point out the language, the specific language. Read it.

A. He says "The President," and I assume the allusion there is to the President in 1867.

Q. That is right, Johnson.

A. Johnson, yes, "that he could no longer tolerate Stanton in his cabinet." This is part of—this cannot be—

Mr. Gertz: I would like the witness to be instructed to answer my specific question, which is simply to read the language aloud from DeWitt which suggests to him that DeWitt was saying that the conspiracy which culminated in Lincoln's death in 1865 was much more widespread than generally accepted.

The Witness: The statement here, you are asking me, requires that I adopt the terminology that the conspiracy was much more widespread. I can only do it if I am able to deduct what you mean by the conspiracy.

Mr. Gertz: I submit that the question is simple enough. It calls for him to read from the DeWitt—

2234 Mr. Martineau: I submit that the whole line of examination is ridiculous. The witness didn't prepare the exhibit at all and didn't even testify that he is an expert on the assassination of Lincoln.

The Witness: As to the possibilities—what you are asking me—

Mr. Gertz: I would like to have the witness instructed to point out the language from the excerpt from DeWitt which suggests to him that DeWitt says that the conspiracy was much more widespread than generally accepted.

The Master: Can you do that?

The Witness: I believe I can indicate that there is an implication here—

Mr. Gertz: Q. Give me the language.

A. An implication here of the motive of Stanton, and that this was Stanton's attitude, that Stanton's attitude was continuing, and that that would be a reasonable element in an assumption that Stanton may have been involved because of his stand in 1867, that it fits in, that it may fit into a pattern that there was the conspiracy.

Mr. Gertz: I would like the witness to be instructed to point out the specific language, to read the spe-
2235 cific language from the excerpt, which he hasn't done.

Mr. Martineau: He did.

The Witness: May I say that the question—

Mr. Gertz: Will the Master instruct the witness?

The Master: Wait a minute now.

The Witness: —that the question ignores the nature of literary and even of legal research. It assumes—

Mr. Gertz: What right has this witness to make a statement?

Mr. Martineau: He has the right.

The Witness: You are asking me—

Mr. Gertz: I have the right to ask him to read the language from the excerpt of DeWitt in which he says that it suggests to him that DeWitt is saying or suggesting that the conspiracy against Lincoln was much more widespread than generally accepted.

The Master: Can you do that? Can you find that?

The Witness: Yes. What I am asserting, taking up the word "suggesting," is that this suggests that Stanton may have been involved, that he may have been able to gain, and therefore—

Mr. Gertz: Q. What language, specific language?
2236 Read it.

A. If I may say so, the word "conspiracy" is not used, but the word "conspiracy" here is a summary conclusion.

Mr. Gertz: Will the Master instruct him to point out the language?

The Master: Can you give us the language on which you base—

The Witness: May I read again?

The Master: Yes, read.

The Witness: "The President told General Grant that he could no longer tolerate Stanton in his cabinet."

Now, I submit that there is a piece of data with respect to Stanton. If the conventional story of Lincoln's assassination does not implicate Stanton I would say here is a small piece that you might say could implicate Stanton, that is, that Stanton had a motive.

Mr. Gertz: Q. That is the language you refer to?

A. Yes.

Q. All right, that answers the question.

A. That is as far as I would want to go.

2237 20-B and 20-I and Quote 39
vs. DeWitt's "Judicial Murder of Mary E. Surratt", page 132.

2241 I see no direct reference to Quote 39. [in this excerpt]. If Millard had looked only at this excerpt, I don't think he could have written what is included in Quote 39. As to 20 (b) and 20(I) only by inference
2242 one could draw that there was a high military commission acting illegally, which it could not do unless high quarters were involved.

2243 I see no direct reference to the effect why this record of the conspiracy trial was deliberately doctored up.

2246 (Re—underscored passage on page 232 of DeWitt's book.)

2247 They are relevant to Quote 39 only in the sense— It does not mention the name of Browning or Bates, but I assume that is the only connection. It refers to the Milligan case.

2248 It could not be a direct source for Quote 39.
(Re. p. 105 of DeWitt's "Judicial Murder")

2249 and 20-B
(That the conspiracy was more widespread and reached high in Washington quarters.) Stanton's equivocal interest in the case would seem to the

reader as related to the conspiracy. In that sense there is a connection.

2250 Whether a remote one, depends on the purpose. It would be hard to say whether the connection is tenuous.

2251 20-L (The why of the doctoring up of the record) This could only be indirect.

(Now pp. 184, 185 of Exhibit 4)

With respect to 20-B, this would give rather con-
2252. siderable support. "It [the petition for clemency] must have been purposely kept from the—public by some person interested in the suppression."

2253 This might well be taken as evidence of a conspiracy. Suppression and doctoring would certainly be synonymous.

2255 I don't recall that Eisenschiml and Millard deal not only with the omission, but with the changing of the language by the official reporter.

(Now to pp. 159, 160)

2257 I don't know that Booth's diary did not appear in the trial record.

2258 There is a reference to the diary [in this excerpt] but not to mutilation.

2259 (Now to p. 199 in the "Judicial Murder")

Martineau: If there are any errors in the statements of this Exhibit, we will very frankly admit them.

. . .

Gertz: We will agree that the following excerpts from Exhibit 4 have no relevance to Plaintiff's affi-
2260 davit paragraphs 20-B and 20-I. DeWitt's "Judicial Murder" pp. 199, 200, 201, 235, 236, 225, 226, 107, 108.

2262 Martineau: Apparently, the person directed to prepare the excerpts has assumed to exercise some legal judgments in these legends below and draws inferences only proper for lawyers to draw.

2263 I apologize to the Court.

Gertz: One of the things that caused Samuels to reach his judgment with respect to non-copying by Millard was this particular volume (Exhibit 4). It was not the only thing, but it was one of the important things that caused him, he says, to change his mind, so it becomes very relevant.

2264 Samuels: I think I made it clear that my judgment was made even before I saw the affidavit, and I saw corroboration in this book (Exhibit 4). My impression was that some of the excerpts were relevant, and you have brought out that some were not.

2265 Re—Quote 26, excerpt from Laughlin.

2266 Martineau: It is an obvious error. There is no question about that. It has no relevancy.

Re—Quote 39.

I don't see the names of Bates or Browning, but . . .

Martineau: We will concede that.

2267 It would be my impression that in a general way it indicates that there was a grave miscarriage of justice in the execution of Mrs. Surratt.

Re—20-B and 20-D in regard to the same excerpt.

2268 This excerpt does not refer to the assassination. It simply says there was a conspiracy.

2269 Regarding 20-D I see only a similarity between the excerpt and 20-D in general way. It does not refer to the road of escape specifically.

2270 Martineau: I frankly admit it is improper to put in this document (Exhibit 4) and it should not have been put in. It is an argument.

Gertz: None of these excerpts are relevant, but I picked out what I regard as the most glaring examples.

2271 Martineau: I will phrase it this way.

2272 Defendant's Exhibit #4 of May 16, 1955, which purports to be a judgment as to the relevance of

these excerpts, to any part of Dr. Eisenschiml's affidavit, shall be withdrawn; that it was improper to have been made, because it amounts to a legal argument and should not have been made at this time in this exhibit, and I will agree right now that it should be withdrawn.

2273 Gertz: I agree to the proposed stipulation, it being clearly understood, however, that I am not waiving my contention that none of the said excerpts have any factual relevance to the paragraphs in question.

Martineau: Right, perfectly proper and satisfactory. • • •

2274 Mr. Gertz: Now let me state that since it is your exhibit I suppose you have the right to withdraw it, but you don't have the right to withdraw from the consequences of having put us to all of the expense and labor in connection with cross examination and preparation and the like, so that if you choose to withdraw it I can't stop you, but I want expressly to retain my right to ask for the taxing of costs and fees.

Mr. Martineau: Well, in that case then I guess I will just leave it in because I don't regard it as much importance either way. • • •

2275 Martineau: This legend at the bottom of each page I suggest be disregarded. • • •

2275 Mr. Gertz: All right, and then subject, again, to my contention that factually the excerpts in question do not in fact have any relevance to the quotes to which we have referred, and subject also to my contention that costs and fees are to be charged by reason of the inclusion of the said material we will consider this as having been withdrawn by you. • • •

2276 Gertz to Samuels: Have you read any books on the Lincoln assassination other than Eisenschiml's?

Samuels: Most notably Bryan's and Thomas'.

2277 "The Book Review Digest".

2278 Moore, "The case of Mrs. Surratt".

2279 Monaghan, "The Lincoln Bibliography".

2282 Gertz: Do you know of any book other than Eisenschiml's and Millard's which in any way seeks to implicate Stanton?

Samuels: My judgment is influenced by the reviews because they were written by people who knew the literature, that this is probably Eisenschiml's unique contribution.

2283 Stanton does not play a large part in the Millard article.

Gertz: On page 36, is the photograph of Stanton, and "Why did he refuse Lincoln the guard he asked for?"

Samuels: It is true that this is the only photograph in the entire article.

Gertz: [And the caption:] "Why did he refuse Lincoln the guard he asked for?"

Samuels: Yes.

2284 It is true that Chapter V in Why has the heading "Protection Refused President." and on page 32, paragraph 3, Eisenschiml says "This request Stanton refused point-blank."

Your question whether the particular reference in Millard's article is quite definitely derived from Eisenschiml is a non sequitor. I don't think there is any relevancy or similarity at this point.

2286 At the bottom of page 106, Column I and top of
2287 Column II, there are a number of references to Stanton.

2288 Stanton plays a role in the Millard article. There are many important persons.

On page 37 of the Millard article I notice underscored matters, but as to representing a pretty substantial
2289 part of the page, the words "quantitive" and "qualitative" have absolutely no meaning in literary analysis.

The underscored portions contribute to the narrative, but I would not say a good deal, because they are details.

2290 Turning to page 105, the only sense in which I could answer whether the underscored portions represent a substantial portion, both qualitively and quantitively, would be typographically; and there I would say they do not constitute a substantial part.

2294 I don't believe the importance of copied passages is a determining factor; nor that if a thing is not overall copied it is not copied at all.

2296 Whether a writer has the right to appropriate the research of another, as long as he phrases it differently, depends on circumstances.

2298 I don't see how Millard could have gotten this material about Burns from the Bryan book, if you say that Burns was not mentioned.

As to the matter about the bartender Henry,
2299 Millard would derive it either from Eisenschiml or from a common source. If Eisenschiml is the sole source, he would be indebted to Eisenschiml.

2302 Since Millard in the deleted portion of his article referred to Eisenschiml in connection with a particular passage, it would be a reasonable probability
2303 that he took other things from him. • • •

Mr. Gertz: Q. I am not sure that I got your answer to this question. In your judgment has any writer the right to appropriate the research of another without permission and without examining the same original sources?

Mr. Martineau: I think I will object to the question. It calls for a legal conclusion.

The Master: Sustained. It calls for a legal conclusion.

Mr. Gertz: Well, he is appearing as an expert on plagiarism.

The Witness: I can testify as to what the practice is, your Honor.

Mr. Gertz: No, you are not being asked that.

He is here as an expert on infringement.

The Master: I know, but now you are asking him
2304 a legal proposition.

Mr. Gertz: I am entitled to see what is in his mind.

The Master: The objection is sustained. Go on.

Mr. Gertz: I would like to argue that, your Honor. I am entitled to know upon what he bases his judgment. If he bases his judgment upon his belief that a man has the right to appropriate another person's research without permission and without examining the same original sources, then I say that he has disqualified himself as an expert, and I make the offer to show that this witness believes that a man has the right to take the research of another without permission and without examining the same original sources.

Mr. Martineau: All that the witness testified to on direct examination—

Mr. Gertz: I make that offer to this witness.

Mr. Martineau: All that the witness testified to on direct examination, your Honor, was that in his judgment as a literary expert Millard's work was an independent literary creation.

Mr. Gertz: I make that offer to prove what I have just said.

The Master: Just a moment.

2305 Mr. Martineau: He did not pass on any or purport to pass on any matters of legal right or wrong. He did, it is true, on cross examination, principally—he was asked certain questions concerning customs and, you might say, scholarly ethics or morals. Now, I think it is highly improper for him to be asked a legal question at

this time. It is a matter for the Court to pass on, your Honor.

Mr. Gertz: I make the offer to prove to this witness—

The Master: I will sustain the objection.

Mr. Gertz: Are you overruling the offer of proof?

The Master I am sustaining the objection made to that question.

Mr. Gertz: I make the offer to prove through this witness, Dr. Ernest Samuels, that Dr. Ernest Samuels believes that a writer has the right to appropriate the research of another without permission and without examining the same original sources.

The Master: That puts a different—

Mr. Martineau: I will object to that. The same thing.

The Master: That becomes the same thing.

Mr. Gertz: In other words, you are refusing the
2306 offer?

The Master: Yes, I am still sustaining—

Mr. Gertz: So to all intents and purposes it is that I have proved that?

The Master: I am sustaining the objection.

Mr. Gertz: As long as I have it in the record that I could prove that through this man.

The Master: It is in the record now. There is no necessity of taking up any more time on it. • • •

2311 Gertz: I want to call your attention to some language in your direct examination quoting from pages 1939 and 1940. (Quotes)

2312 Gertz: Now when did "Myths" appear?

Witness: I think 1929. That would place it before the Eisenschiml books.

2313 Gertz: (Quoting from page 1901 of testimony):

"I think Crook hears, and for this . . . I am told there is no historical basis . . . Lincoln moaning in his sleep, and as soon as I read that I knew that Millard—

and an author will frequently will do things drawing upon his unconscious literary memories . . ."

2314 Samuels: I don't recall that anyone specifically told me that.

2315 Gertz: (reading from Crook's "Through Five Administrations", page 13.

"When in my patrol I came near to the door of the President's room, I could hear his deep breathing. Sometimes after a day of unusual anxiety I have heard him moan in his sleep."

Samuels: I was prepared to say that what I said was simply an impression, and I could well have been mistaken.

2316 If this is the sole source, I would say that it is highly dubious.

2319 I was told a number of things about Millard, yes. I think I was told that Millard had visited—had had a friendy visit with Eisenschiml.

2320 Perhaps I did say that he had consulted with Eisenschiml. Yes, I expressed no surprise when you said there had been no consultation.

Gertz: (reading from page 1939 of testimony.)

2321 "There is obviously no copying of language, except, I think, I detected ten words that looked like direct copying, though they might well be verbal echoes."

2322 On page 1945 on direct examination you were asked: "Doctor, you mentioned a little while ago as you read over the 55 Quotes

'—there were a couple of instances here you thought Millard had copied. Can you lay your hands on those'"?

"and your answer:

'There were two'."

On page 1947 you were asked by Mr. Martineau to single out the particular passages you had in mind, and you answered,

2323 "And afterward Stanton swore under oath . . . that Abraham Lincoln had not been . . . then "Stanton testified under oath that Lincoln did not visit. . . ."

Samuels: That was Quote 10. There are similarities of language but not identities.

"In his Memoirs Grant skilfully slid over" . . . "Grant passed over". That is Quote number 4.

2324 "It is that sort of thing, and that is the only sort of thing that I saw, portions of a sentence, but I nowhere saw any extended copying."

Samuels: Those are not direct identities. The only one that struck me was the

"coarse and violent—"

2327 In Quote 35, that final sentence, "That close O'Beirne came to making the capture." vs. "That close O'Beirne came to getting his man."

2328 This is practically identical language except for the word "getting." and it is preceded by a direct Quote in identical language.

2329 There is no question about the identity.

2330 The source of this would have to be Eisenschiml because Millard had not seen the original papers.

I think Millard took that sentence from Eisenschiml. It seems to me probable in that case. And the quote is a certainty.

2331 That, I am sure is not in dispute.

I would have to forget everything I know about the habit of scholars to say this is significant of an intention to plagiarize.

That Millard used Eisenschiml for other portions I believe was apparent to me, but this is insignificant

2332 material. It is correct that I think Millard acknowledged far more indebtedness than I have testified to.

Gertz: On page 1492 of your direct examination, Mr. Martineau showed you Defendant's Exhibit #4 and then said:

"I guess you were referring to this"

and you answered:

2333 "Yes, this is the sort of research that would need to be done when you are working out a scholarly problem. Is there a unique source or is there a common source?"

2334 Samuels: I think I explained to what extent I relied on Exhibit 4. I did not rely on it.

Gertz: On page 1943 of your direct examination you said:

2335 ". . . The most important refutation, is the common source, and in going through this (referring to Exhibit 4) it supported what was basically my suspicion that there were common sources."

"I was struck again and again by the fact that adequately accounted for what, at the first blush, —seemed like borrowing."

2336 [Then I asked you:]

"In other words, the impression you got after looking at this Exhibit #4 . . . is that . . . Millard borrowed from the common source"

[and you answered:]

"That is true. That is true."

Samuels: I recall that, not specifically, but it has a familiar ring. You correctly summarize that it [the Exhibit #4] came as a kind of corroboration, but my opinion is not [based] on that exhibit.

2337 I cannot answer yes or no to your question whether I reached my conclusion on the assumption

that Millard and Eisenschiml used common sources. I reached it in a rather complex manner, but the question of common source was not controlling in my initial opinion.

2338 Although I am not an expert on the Lincoln or assassination literature, I know whether common sources were used by Eisenschiml and Millard, partly from my reading and from the vast amount of documentation in Eisenschiml's book, which convinced me that in it very little would emerge as his own contribution. Partly I knew it from Bryan's book and the many reviews.

2339 I did not rely on Benjamin Thomas or Monaghan. I consulted Thomas in order to acquaint myself

2340 more fully, with the state of Lincoln scholarship.

2341 Yes, I think Thomas referred to the new material in Eisenschiml's book. Other historians in their reviews spoke of new material, and Millard speaks of it and new discoveries. And so does Paul Angle. I don't think the publishers would have published it unless there was new material in it.

Mr. Gertz: Doesn't that mean that your statement earlier, that Eisenschiml derived his book from common sources is inaccurate?

Samuels: Oh, no. It is a blend of the old and the new.

2342 Quote 3

Mr. Gertz: Did Millard use the material in any way different from Eisenschiml?

2343 Samuels: The true nature of the parallel is that Millard used Eisenschiml as a historical source, so that a number of words will have to be identical. In

2344 that respect only, is there a similarity.

2347 Quote 7.

I think it probable that Millard borrowed the factual information from Eisenschiml.

2349 The literary handling of it is different.

2350 I would not call this detail colorful.

Quote 11

Gertz: At the time of your direct examination did you know that Millard had admitted that he

2351 had not [read] the Boston Sunday Post of June 11, 1915?

2353 I did not know.

In looking at the two Quotes #11, it could be that Millard derived it from Eisenschiml.

2354 As to language, there are fragments here, which would not be conclusive.

2355 There are some similarities of portions, yes.

"There is no record" —"we have no record". Then "How about the busy Major Eckert" vs "Now as to Eckert," no scholarly inference would really be justified.

2356 "Stood in the bathroom shaving", is different from "He was found in the bathroom shaving." That is more colorful than in the original.

2358 I believe that particular material is used differently from Eisenschiml.

2361 The main changes are the transformation of the language, the differences in style, the difference in purpose. • • •

Mr. Gertz: Q. Will you listen for a moment, Doctor? I dont' want a lecture on literary criticism. I want specific pointing out of the precise manner in which Millard has used the material in quote 11 as contrasted with the

2362 precise manner in which Eisenschiml has used the same material in quote 11.

A. I have tried to suggest —

Mr. Martineau: Off the record.

(Discussion off the record.)

The Witness: Well, you cannot dismember the literary process in a manner that your question implies. That is where my difficulty arises.

Mr. Gertz: Q. All right, you have answered it. You can't do it.

A. That is, you treat it as a chemical process. It is not.

Q. All right. Now, would you say the material in 11 is a colorful or interesting or important part of the Millard story?

A. That contains a number of conclusions. As to color I would say from the point of view of stylistic treatment it is not colorful. As to, what was the second, characterization —

Q. Interesting?

A. That it is interesting? Only in the context.

Q. Important?

A. From the point of view that I have shown that this has to be regarded, I would say no, it is not important. • • •

Quote 13

2363 I did not know at the time of my direct examination that Millard had admitted never having seen the records of the Metropolitan Police.

2364 If I had, it would not have changed my opinion.

Quotes 13, 14, 15.

As to whether Millard used the Parker material differently from Eisenschiml, the style is different. As to substance, the main items occur in both. The language

2365 is not colorful, the episode is interesting, but not im-
2366 portant in Millard's story.

As to Quote 14, I did not know during my direct examination that the incident of Parker being kicked appears only in Eisenschiml and Millard. If I had known, I would not have qualified my opinion, because the kick is a historical fact, whether any writer is entitled to take it, is another question.

2366-2367 In many cases, no, but in this case, it is fair use.

Quote 15

2374-2375 I did not know during my cross-examination that the only place where the full text of Mrs. Lincoln's letter appears is in Eisenschiml.

2377 It is hard to say whether it is unlikely that Millard would first have gone to Sandburg, and then to Eisenschiml to supply a few missing words.

Quote 16

2378 I did not know during my direct examination that Millard admitted that the only place where he saw the Forbes affidavit was in Eisenschiml. It would not have affected my judgment. Millard uses the material differently, first, in style. Millard says "all the accounts", Eisenschiml says "most authorities".

2380 As to the differences in substance, you are using that word in some sort of metaphysical sense.

Gertz: Can you come down to earth on Quote 16?

Samuels: No, you cannot. I can't do it as an expert.

2381 Gertz: A man who is telling the truth would find no difficulty in pointing out substantial difference. He has evaded that question every time it is put to him.

Quote 17

2382 You asked me to compare "the news-beat of the century" with "the great scoop of the century". They appear in the same context. One seems to echo the other, I would say.

2383 As to substance, they both contain substantially the same idea. Yes, they are similar in language.

2385-2386 The material is interesting, and a significant part of the episode.

Quote 22

2386-2387 I did not know at the time of my direct examination that Millard had been

2387 asked by Mr. Martineau

"Did you steal or pirate that from Eisenschiml?" and that he answered "I am rather afraid I did."

2388 That would not qualify my statement, because it seems to me his statement was uncalled for.

Gertz: In other words, even if he stated that he stole anything from Eisenschiml you think he ought not to have admitted it?

Samuels: He was not a lawyer, and all he was competent to talk about was the nature of his borrowing.

2389 Regarding Quote 22 I would not say that Millard and Eisenschiml make substantially the same use of the material. Millard is dramatizing the statement, and underscores the baffling element of it.

2391 You ask me to point out the differences between the uses made by the material in Quote 22 between the two authors other than stylistic.

2392 The facts are about the same. The use is different. Millard directs it toward confusion and bafflement.

2393 Eisenschiml was concerned with calling attention to a contradiction, showing that there were forces

2394 at work to alter the testimony.

2395 Millard's treatment of the material is colorful and interesting and important in that episode.

Quote 23

I did not know during my direct examination that Millard had admitted that he got the material about the doctoring of Fletcher's testimony from Why.

2397 I do not believe his admission would be evidence that he stole the material.

2398 All that appears clear from Millard's admission is that he got his data, read it, and based his story on it. There is a similarity in the phrase "Fletcher stated that he overheard"

2399 Millard and Eisenschiml both give the same thing, that people were saying. The quotations are not exact but fairly close. There is no question that Millard got the source of that quotation from Eisenschiml.

2400 There is a substantially different presentation. The difference is not material.

2401 I don't think this is a very colorful passage.

2402 It is not important in developing Millard's entire article.

Quote 24

I did not know at my direct examination that Millard admitted having gotten it from Eisenschiml

2403 It would not affect my original opinion.

2404 I did not know then that Millard admitted never

2405 having seen the police blotter. It would not have qualified my opinion. Within the context the material is interesting.

2406 As to detail it is important.

2407 I do not know if there is anything about Fletcher in Millard that is not derived from Eisenschiml.

Quote 26

(Samuels is asked to read the Gleason article.)

2409 I did not find in the article in my first reading the adjective "flatly";

2410 nor "flatly refused".

2411 The similarity of language in Millard and Eisenschiml [in using these words] would suggest to me preliminarily that Millard had access to Eisenschiml's book. He could not have gotten it from Gleason's article. It seems to me it is a verbal echo.

2412 (Witness is shown Plaintiff's Exhibit 30, three parallel columns — one the Gleason episode in Gleason's article, one in Eisenschiml, one in Millard.)

2412-2413 I would say that it is a possibility that Millard derived this from Eisenschiml, not from Gleason.

2414 There is a degree of probability that Millard derived it from Eisenschiml.

Quote 27

2417 I did not know at my direct examination that on direct examination Millard was asked "Will you tell whether you pirated No. 27 from Eisenschiml?" and he answered "Yes . . . that is the number of persons rushing to headquarters".

2418 Nor did I know that Millard admitted not having seen the blotter. Overall, it could not have changed my testimony; in detail, it could throw light on the character of Millard's indebtedness to Eisenschiml for the factual material.

2419 It would not indicate that he was indebted to him in other quotes as well. You might multiply these isolated passages to 77 or 107, several hundred of a thousand. I see no pattern of theft, but a pattern indicating that Millard is indebted to Eisenschiml for a considerable amount of material.

2420 This is not one of the more dramatic passages. I think the material is important as to what happened that night.

Quote 28

2423 I did not know at my direct examination that Mil-
2423 lard admitted not having seen the Macon Daily News of April 26, 1865 and that he got its sole knowledge from Eisenschiml's book.

2423-2424 It would not have changed my opinion.

2425 I would not consider the material colorful; it is significant within the episode.

Quote 29

2426 (Witness is asked to read Plaintiff's Exhibit 31.) (3 parallel columns, one giving Gobright's original story in excerpt, one Eisenschiml's and one Millard's version of it.)

2427 I find nothing in Column I about "Rushing out, he quickly wired his papers. From there Gobright hurried to Ford's Theatre." I find neither the language nor the thought.

2428 Yes, there is a similarity of thought [between Column I and II], and one could be a paraphrase of the other. In this instance I think it would be a probable inference that Millard got at least a part of this from Eisenschiml, yes.

2430 I could not cite this passage as one of the more picturesque elements

2431 in the article. Nor is it an important part.

Quotes 34 and 34A

I did not know when under direct examination that Millard admitted that "Quote 34 falls under the Eisenschiml credit."

2434 Nor did I know that Sandburg credits Eisenschiml in "The War Years" with the Parker material. Had

I known these two things, it would not have qualified my testimony.

2435 Quote 34 is one of Millard's more colorful treatments of the facts.

2436 It is important in the sense that any detail, if well used, is important. It helps make the article. 34-A is a detail that has a very real function

2437 within the structure of the narrative.

Quote 39

The significance of Millard quoting only Browning and Bates and in the same order as Eisenschiml is this: the source would be in Eisenschiml.

2438 That the two men are described in the same manner by Millard would either be an imitation of language, or because the material was similar. I do not know whether at that time Browning was a Senator from Illinois. I can make no deduction, whether his being Secretary of the Interior has anything to do with the quotation.

2439 As to regarding it as significant that Millard quotes nothing else from Browning and Bates, I think it would be a fair inference that Millard used Eisenschiml as a source for these quotations.

2439-2440 As to colorful language, I would regard it as a meaningless characterization. Both are interesting details.

Quote 40

There is a similarity and dissimilarity in language.

2441 The phrases "farm tavern", "the peach orchard", "a few sheds and barns" are identical, and I suppose the facts are identical.

I had not known when under direct examination that

no similar description exists. It would not have qualified my testimony.

2442 As to this material being colorful, Millard has tried to make it so, but these details are only fragments.

Quote 47

(Witness is asked to read Plaintiff's Exhibit 28) and look for finding anything that "going south one might find a boat to take one north."

2443 I find nothing that would indicate this.

If there is no such statement of fact I would be willing to accept it. It seems clearly here that the source of information is in Eisenschiml's book.

2444 It is Eisenschiml's deduction.

I would regard 47 as one of the details which has a part in the story, but not a key part.

Quote 48

When under my direct examination I had read that the source of this was the O'Beirne papers.

2445 Millard freely acknowledges that this is one of the many historical sources derived from Eisenschiml.

2446 Martineau: It is conceded that in the published story there is not any credit to Eisenschiml.

2450 I think it is reasonable to conclude that one of the historical sources to which Millard is indebted is Eisenschiml, and it is one of the important ones.

2451 Quote 49

Millard says "Jett was even used as a government witness." Eisenschiml says "Jett was even used as a witness for the government."

I would say the language is closely similar.

At that point it would be a fair inference that Millard took the language from Eisenschiml.

2452 Quote 64

I would say that 10:13 business would be interesting. "Colorful" would not be the word.

• • •

2453 I think it would be desirable if a language expert himself ought to be able to write with accuracy and clarity, but they don't always.

2454 As to mistakes in grammar and punctuation, I would say that errors one should try to avoid, but sometimes you make them or your editors or proofreaders.

As to my book "The Young Henry Adams" I hope I can write better than I did then.

2454 ff. (Questions and answers with respect to grammatical errors, the style, etc., of Samuel's book on Adams).

• • •

2478 *Redirect Examination of Mr. Samuels*
2479 *by Mr. Martineau.*

Assuming that in some instances Millard did go to the common sources and in others he admitted borrowing factual material and language from Eisenschiml, I would still say that Millard's work could be an original work.

It could be and it is.

The material borrowed is a relatively small proportion of the total article and of the books from which they
2480 were taken: hence the originality would stand.

Out of the 25,000 words, more or less, the borrowed material would not exceed some 5,000 words, and the greater part of the language and of the data used, the very greater part, certainly of the language, is Millard's own.

2482 The alleged borrowed material does not bear materially upon the originality of the whole piece.

2484 In the medium in which the article was published, it is a very rare thing to come upon acknowledgments of indebtedness.

2518 Martineau makes a statement.

As to Defendant's Exhibit 4 I suggest that I physically cross off the arguments on the bottom, because all it was intended to be was just a source book, an accurate copy of these authorities, whether they be in point or not.

Then I find, that this researcher, by some misunderstanding, did not include everything. For example,
2519 she did not include materials from some of the alleged differences that Eisenshciml pointed out in his affidavit, that thing about the gimlet hole for example, and we are working on that now. • • •

2520 Mr. Gertz: Without, of course, waiving any of our objections.

Mr. Martineau: That is right. In other words, whether they be material or not is for your Honor to decide, but they are, as far as the evidentiary standpoint is concerned, matters within the public domain and can be checked by everybody, can't they, so I think we understand each other on that.

Mr. Gertz: In other words, the plaintiff is making no admission as to the meaning or arguments to be derived from any of those quotes.

Mr. Martineau: That is right.

Mr. Gertz: Or whether they have any evidentiary value or not.

Mr. Martineau: Right.

Mr. Gertz: And as a matter of fact, we are formally stating that we believe that none of them are of any materiality or competent to prove anything in issue here,

but we nonetheless, for whatever it is worth, will permit counsel to add those pages. * * *

2525 Coronet article received in evidence as Def's. Ex. 2 of 5-27-55, subject to objection.

2526 Advocate article recived in evidence as Def's Ex. 3 of 5-27-55, subject to objection.

2534 Proofs closed.

2538 Stipulation as to Civil War Round Table received as Def's Ex. 1 of 9-23-55. * * *

2538 Mr. Martineau: Before I forget it, may I make this statement, Elmer. I don't remember the number, if it had a number, a separate number, of Dr. Eisen-
2539 schiml's affidavit in support of the motion for summary judgment.

Mr. Gertz: That was Exhibit 7, Plaintiff's Exhibit 7.

Mr. Martineau: Exhibit 7?

Mr. Gertz: Yes.

Mr. Martineau: Now, my recollection was that when you offered that in evidence I made no objection to it.

Mr. Gertz: That is right.

Mr. Martineau: I would have sworn and still would swear except that I don't concede the truth of what is in in, but I have no objections—

Mr. Gertz: Here is what you said, here is the sequence. At the time it was offered you said "No objection." No objection was received.

At a subsequent hearing, or maybe later in the same hearing, you made some remark to the effect—

Mr. Martineau: A qualification to that effect.

Mr. Gertz: Yes, but at the time it was offered you made no objection.

Mr. Martineau: That is my memory of it. It was agreed then, I think the upshot of it was, that I had no objection

to its admission in evidence, but I didn't want to be
2540 put in the position of admitting the truth of all the statements of fact, for one reason—

Mr. Gertz: You subsequently said that, but at the time it was offered you made no objection.

Mr. Martineau: Yes, just as long as the record is straight on the fact.

Mr. Gertz: Either at the same hearing or subsequently but not at the time it was offered.

Mr. Martineau: That is right. * * *

2550 End.

PLAINTIFF'S EXHIBIT 6

REQUEST FOR ADMISSIONS

The plaintiff, Otto Eisenschiml, requests the defendant, Fawcett Publications, Inc., a Delaware corporation, within ten (10) days after the service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. Exhibit "A", attached to affidavit of plaintiff in support of his motion for summary judgment, heretofore filed herein, and by this reference made a part hereof, is a true and correct photostatic copy of pages 73 to 77, both inclusive, of a book-length article, entitled "The Devil's Errand Boy," by J. J. Millard, which appeared in the July, 1947 issue of defendant's magazine "True."

2. Exhibit "B", attached to the said affidavit, and by this reference made a part hereof, is a true and correct copy of the passages on pages 122 to 124 of a book by Dr. Paul M. Angle, entitled "A Shelf of Lincoln Books," relating to plaintiff's book, "Why Was Lincoln Murdered?"

3. Exhibit "C", attached to this said affidavit, and by this reference made a part hereof, correctly sets forth in the first column thereof, under the words "True Magazine," passages from the book-length feature by Joseph Millard, which appeared in the February, 1953 issue of defendant's magazine "True," and correctly sets forth in the second column thereof, under the words "Otto Eisenschiml," passages from plaintiff's books, "Why Was Lincoln Murdered?" and "In the Shadow of Lincoln's Death."

4. The document annexed to paragraph 24, attached to the said affidavit, and by this reference made a part hereof, is a true and correct photostatic copy of a genuine letter from Fawcett Publications, Inc., to Mr. Charles E. Mason, 224 Washington Street, Waukegan, Illinois, dated February 27, 1953, which letter is signed by Ralph Daigh, Vice-president and Editorial Director of defendant.

5. Paragraphs Nos. 1 to 27, both inclusive, of the said affidavit, and by this reference made a part hereof, correctly and accurately set forth the facts that they purport to set forth.

(If, for any legal reason, defendant is unwilling to admit the correctness and accuracy of any of the said paragraphs, it is requested to admit the correctness and accuracy of the other of such paragraphs or portions thereof.)

* * *

PLAINTIFF'S EXHIBIT 8

INTERROGATORIES ADDRESSED TO DEFENDANT

Plaintiff, Otto Eisenschiml, addresses the following interrogatories to the defendant, Fawcett Publications, Inc., a Delaware corporation, to be answered by its proper officer,

under oath, pursuant to Rule 33 of the Rules of Civil Procedure:

1. As to *each* of the sixty-six (66) items included in column 1 of Exhibit "C", (headed "True Magazine"), attached to plaintiff's affidavit in support of motion for summary judgment, heretofore filed herein, and by this reference made a part hereof, answer the following interrogatories:

(a) What is the source of the said item—name of book, magazine or other source; author, editor, compiler or other identification; publisher; date of publication; page or pages where item appears?

(b) Where and when did you or your author, Joseph Millard, first see item or its source?

2. As to *each* of the thirty-five (35) items included in paragraph 19 of plaintiff's affidavit in support of motion for summary judgment, heretofore filed herein, and by this reference made a part hereof, answer the following interrogatories:

(a) What is the source of the said item—name of book, magazine or other source; author, editor, compiler or other identification; publisher; date of publication; page or pages where item appears?

(b) Where and when did you or your author, Joseph Millard, first see item or its source?

3. As to *each* of the fifteen (15) items included in paragraph 20 of plaintiff's affidavit in support of motion for summary judgment, heretofore filed herein, and by this reference made a part hereof, answer the following interrogatories:

(a) What is the source of the said item—name of book, magazine or other source; author, editor, compiler or other identification; publisher; date of publication; page or pages where item appears?

(b) Where and when did you or your author, Joseph Millard, first see item or its source?

4. If you contend that any of the items included in paragraph 21 of the said affidavit, and by this reference made a part hereof, are in fact well founded and true, and not historical errors as contended by the plaintiff, then, as to *each* of the said items, answer the following interrogatories:

(a) What is the source of the said item—name of book, magazine or other source; author, editor, compiler or other identification; publisher; date of publication; page or pages where item appears?

(b) Where and when did you or your author, Joseph Millard, first see item or its source?

5. As to specifically which "sensational discoveries" of plaintiff do you or your author, Joseph Millard, have reference in the quotation from the article in the July, 1947, issue of your magazine, "True", set forth in paragraph 11 and Exhibit "A" of said affidavit?

6. As to the February, 1953, issue of your magazine, "True,"

(a) What was the circulation or sales thereof?

(b) What were the gross receipts from such circulation or sales?

(c) What were the gross receipts from advertising revenue thereof?

(d) What were the total gross receipts thereof from any source?

• • •

PLAINTIFF'S EXHIBIT 9

ADDITIONAL REQUEST FOR ADMISSIONS

The plaintiff, Otto Eisenschiml, requests the defendant, Fawcett Publications, Inc., a Delaware corporation, within ten (10) days after the service of this request to make

the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1 (a). The factual material summarized in sub-paragraph (a) to (ii), both inclusive, of paragraph 19 of the affidavit of plaintiff in support of his motion for summary judgment, heretofore filed herein, and by this reference made a part hereof, appears in either or both of plaintiff's two books, "Why Was Lincoln Murdered?" and "In the Shadow of Lincoln's Death", and also appears in defendant's said article in the February, 1953 issue of its magazine "True".

(b) The said factual material appeared or was published for the first time in either or both of plaintiff's two said books.

(If, for any legal reason, defendant is unwilling to admit the correctness and accuracy of any of the said sub-paragraphs, it is requested to admit the correctness and accuracy of the other of such sub-paragraphs or portions thereof.)

2. (a) The deductions, conclusions and speculations summarized in sub-paragraphs (a) to (o), both inclusive, of paragraph 20 of plaintiff's said affidavit, and by this reference made a part hereof, appear in either or both of plaintiff's two said books and also in defendant's said article.

(b) The said deductions, conclusions and speculations appeared or were published for the first time in either or both of plaintiff's two said books.

(If, for any legal reason, defendant is unwilling to admit the correctness and accuracy of any of the said sub-paragraphs, it is requested to admit the correctness and accuracy of the other of such sub-paragraphs or portions thereof.)

3. Defendant's author, Joseph Millard, made the following historical errors in defendant's said article:

(a) as to where Booth got the wood with which the Presidential box was braced;

(b) as to Sergeant Dye's testimony;

(c) as to what could be seen when looking through the gimlet hole in the Presidential box;

(d) as to the certainty of the identification of Booth;

(e) as to why Paine needed a guide;

(f) as to the "second rider;"

(g) as to whether the soldiers were sent to help Booth escape;

(h) as to the "little bells;"

(i) as to the "gin-soaked prostitute."

(If, for any legal reason, defendant is unwilling to admit the correctness and accuracy of any of the said sub-paragraphs, it is requested to admit the correctness and accuracy of the other of such sub-paragraphs or portions thereof.)

4. Defendant's author, Joseph Millard, never had the O'Beirne Papers in his possession and never examined them.

* * *

PLAINTIFF'S EXHIBIT 10

ADDITIONAL REQUEST FOR ADMISSIONS

The plaintiff, Otto Eisenschiml, requests the defendant, Fawcett Publications, Inc., a Delaware corporation, within ten (10) days after the service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. (a) Otto Eisenschiml, the plaintiff herein, is a citizen of the United States. (b) He acquired such

citizenship at birth. (c) He was a citizen at the respective times of the copyright of his two books, ***Why Was Lincoln Murdered?*** and ***In the Shadow of Lincoln's Death,*** and (d) continuously since then. (e) The records in the Passport Office of the Department of State of the United States state that he acquired American citizenship at birth under the provisions of Section 1993 of the Revised Statutes of the United States, as originally enacted.

2. (a) Joseph Millard, the author of "America's Greatest Unsolved Murder," voluntarily destroyed his source notes prior to the publication of his article. (b) His original source notes are not now in existence or available.

3. (a) The net paid circulation of "True" for the January, 1953, issue, was 1,824,292. (b) The net paid circulation thereof for the March, 1953, issue was 1,709,805. (c) The average net paid circulation thereof for the six-month period ending June 30, 1953, was 1,739,088. (d) The average net paid circulation thereof for the six-month period ending December 31, 1953, was 1,789,970.

4. (a) Copies of the February, 1953, issue of "True" were sold or circulated by the defendant throughout the year 1953 and (b) throughout the first eight months of the year, 1954. (c) Copies of the said issue were sold or circulated by the defendant after its receipt of the letter to it from Charles E. Mason, dated February 19, 1953 (which letter is a part of par. 24 of plaintiff's affidavit in support of his motion for summary judgment). (d) Copies thereof were sold or circulated by the defendant after its receipt of a letter from Elmer Gertz, attorney for the plaintiff, dated March 12, 1953, which letter complained of alleged copyright infringements by defendant. (e) Copies thereof were sold or circulated

by the defendant after the present suit was filed. (f) The defendant has never made any effort to stop the sale or circulation of the February, 1953, issue of "True" by any of its agents, representatives or distributors or newsstands or magazine dealers generally. (g) The said issue has been sold by distributors, newsstands, magazine dealers and others since the defendant's receipt of the said Charles E. Mason letter dated February 19, 1953, the receipt of the said Elmer Gertz letter dated March 12, 1953, and the filing of the instant suit.

5. (a) Joseph Millard never submitted to the defendant his sources or authorities for the said article or any authorizations or permissions to use any material therein; and (b) defendant never asked him for such sources, authorities, authorizations or permissions. (c) Prior to the publication of the said article, the defendant made no effort to check said article for possible copyright infringements.

6. (a) The defendant never submitted the said article to historians or authorities on the Lincoln assassination prior to its publication. (b) A member of the editorial staff of the defendant suggested in writing that the defendant submit said article to a historian or authority on the Lincoln assassination prior to its publication. (c) The said suggestion was read by Ralph L. Daigh prior to the publication of the said article, and (d) ignored by him.

7. (a) Neither Joseph Millard, nor the defendant, nor anyone for them, or either of them, ever asked the plaintiff, nor any one for him, for permission to use any of the language or material of plaintiff's two said books in connection with the said article, and (b) no permission for such use was ever given by plaintiff, or any one for him, to them or any of them in connection with the said article.

8. (a) After February 11, 1953, the defendant advertised or publicized the said article by Millard, and (b) did so after March 12, 1953, and (c) did so after the filing of this suit. (d) The defendant advertised or publicized the said article on the cover of the January, 1954, issue of "True."

9. Joseph Millard read the plaintiff's two said books before writing his said article, "America's Greatest Unsolved Murder."

PLAINTIFF'S EXHIBIT 17 *ID*

(Seal)

LETTERHEAD OF
DEPARTMENT OF STATE
Washington

Oct 2 1953

In reply refer to
C130 - Eisenchiml, Otto
Mr. Otto Eisenschiml,
Care of Cunilate Division,
Scientific Oil Compounding Company, Inc.,
1637-55 South Kilbourn Avenue,
Chicago 23, Illinois.

My dear Mr. Eisenschiml:

The Department has received your letter of September 17, 1953 from which it appears that you desire to obtain a statement establishing your American citizenship for use in connection with your re-entry into the United States from Canada.

Your American citizenship is of record in the Department in the form of the applications upon which several American passports were issued during the years 1925 to 1935 and which show that you were born at Vienna, Austria on June 16, 1880; that you emigrated to the

United States in 1901 and that your father, Alexander Eisenschiml, was naturalized as a citizen of the United States before the District Court of the United States for the Fourth Judicial District at Silver City, Nevada on October 5, 1869.

You are deemed to have acquired American citizenship at birth under the provisions of Section 1993 of the Revised Statutes of the United States as originally enacted which is quoted in the enclosed circular.

Sincerely yours,

/s/ R. B. Shipley,
R. B. Shipley,
Director, Passport Office

Enclosure:
Circular.

PLAINTIFF'S EXHIBIT 20

OVER-ALL PLAGIARISM OF MILLARD'S STORY

Millard's plagiarisms are not confined to pirating my material, my language, my surmises and inferences, but in addition comprise the entire buildup and the main thesis of my books, especially that of "Why Was Lincoln Murdered?"

"Why Was Lincoln Murdered?" is essentially different from all previous accounts of Lincoln's assassination. It reopens the supposedly closed chapter of Lincoln's death by disclosing many news facts, discovered by myself, and, what is equally important, it dovetails them with known facts into a new and consistent pattern, which form the main thesis—that the crime was not, as heretofore assumed, the deed of a half-crazed actor acting on his own behalf, but the result of a conspiracy, in which high Washington officials were involved, possibly Secretary of War Stanton included. The book also points out many hereto-

fore overlooked mysteries, some of which remain unexplained.

Prior to the publication of "Why Was Lincoln Murdered?" no suspicion along these lines had been voiced by any historical writer. This thesis was then supplemented by my second book, "In The Shadow of Lincoln's Death."

Millard pirated my essential new material, together with my language, speculations and inferences, and with the mysteries which still await solution. He followed closely the buildup of my story, thereby committing plagiarism both on a wholesale and retail scale.

Even had he not copied my new facts, my language, my surmises and my interpretations, his article still would constitute plagiarism because of the way in which the pattern of his story parallels mine. In fact, it is virtually a condensation of my initial chapters.

• • •

Here is an outline of the principal chapters of "Why Was Lincoln Murdered?" which Millard plagiarized, together with his parallelisms. Also note how he carries his story along in line with my own buildup.

CHAPTER III

This chapter recites the career of an incompetent and dissolute policeman named John F. Parker, who was Lincoln's bodyguard on the fatal night, and how he happened to be appointed through a letter written by Mrs. Lincoln to a provost marshal named O'Beirne. This story, taken partly from the dust-covered archives of the Washington Police Department, and partly from the private papers of O'Beirne, had never been published before. Millard's sequence of incidents is somewhat different from mine, but his buildup closely parallels mine.

Millard begins his story with identically the same premature notices of Lincoln's death, as I did at the beginning of my book "In The Shadow of Lincoln's Death," then copies Mrs. Lincoln's letter to O'Beirne verbatim. His account of Parker's career is almost verbatim repetition of my own, although he scatters it throughout his article.

CHAPTER IV

Shows that the accepted version of what happened in the President's box at Ford's Theatre, prior to the assassination, was wrong. I proved this through a heretofore unpublished statement of Lincoln's valet, Charles Forbes, and one by a journalist named Hanscom, also heretofore unknown. I further pointed out the variations and contradictions of two different statements made by three witnesses—Miss Harris, Major Rathbone and Captain McGowan. Some of these statements had been unknown, others had not been properly evaluated. My evaluation led to the suspicion that these witnesses had been influenced by the War Department to omit certain portions of their original statements.

Millard calmly appropriated the Forbes statement verbatim; in addition he copied the statements of Miss Harris, and Major Rathbone, which had admittedly been unknown to him, and furthermore, pirated my surmises and inferences from the statements of all four of the above persons.

CHAPTER V

Here I investigated Stanton's refusal to allow Major Eckert to accompany Lincoln to the theatre, and uncovered the falsity of the statements by Stanton and Eckert as to what they intend to do that night. I further pointed out Stanton's perjury about Lincoln's last visit to the

War Department. All these incidents, some of which had lain deeply buried in Congressional records or old newspapers, increased my growing suspicion of Stanton's complicity.

Millard followed me here without shame. He repeated my proof of Stanton's and Eckert's lies, also what they really did that night, and copied my implication of Stanton's complicity by printing a picture of Stanton with this caption: "Why did he refuse Lincoln the guard he asked for?"

CHAPTER VI

One of my main points is that the War Department had known the identity of the conspirators for several weeks prior to the assassination, but had taken no action against them, had not even kept them under surveillance. My proof was a letter, known as the "Sam letter," which was generally accepted as the means which identified Sam Arnold, one of the conspirators, and led to his arrest. I showed that this assumption was wrong.

Millard repeats my account, including my discoveries and inferences, with dog-like fidelity.

CHAPTER VII

In this chapter I showed that Grant's version of why he stood up Lincoln that night was a fabrication, because according to a time-table, which it took one of my investigators about nine months to find, he could have reached his children by an early morning train almost as quickly as by the night train he took. I also doubted his anxiety to see his children, from some of whom he had not been away very long. I further pointed to the fact that had Grant been present in the box, Booth's plot could not have been carried out.

Millard copied everything in this chapter, including the train schedules, also my suspicion that his anxiety to see his children probably was exaggerated.

CHAPTER VIII

I proved for the first time that the news of the tragedy and the name of the assassin were *wilfully* withheld from the press until the time for the first morning editions had passed; and that, wherever this was impossible, the papers were kept from printing the truth. This includes the strange behavior of L. A. Gobright, the Washington agent of the Associated Press.

I further showed that the interruption of the wire service at the critical hours was an inside job, and why no efforts were made to investigate it.

I further showed that the Southern papers were very tardily advised of the news, or were not allowed to print it at once.

The implication of these facts is that Booth was to be given time to get safely beyond reach of successful pursuit.

Millard virtually paralleled this chapter with all of its inferences. He cited all Southern papers which I had cited, although he admitted that he himself had seen none of them, and presented none which he had found himself.

CHAPTER IX

Here I showed that the War Department sent troops out to patrol every road out of Washington, except the one which Booth was most likely to take, and did take.

Millard practically pirated this chapter in toto.

CHAPTERS X and XI

These are the chapters showing the strange manner in which the report of the liveryman John Fletcher was

ignored; how sound plans for the pursuit of Booth were frustrated by the War Department, and how the official transcript of Fletcher's testimony, sanctioned by the War Department, was deliberately mutilated, in order to suppress the tell-tale parts of Fletcher's testimony.

Here again Millard parroted my story, and, after pirating my findings in Washington archives, re-voiced my suspicions, inferences and surmises.

CHAPTERS XII and XIII

Relates how Major O'Beirne almost caught Booth, but was called back by Stanton at the critical moment.

Again Millard picked up my idea and told the same story, with the same inferences.

CHAPTERS XIV and XV

This chapter carries to the final cornering of Booth, and then deals with the alleged plots against other high government officials. It also shows that Booth deliberately left behind clues to show where he intended to go, and I interpreted this as a game of a fox with the hounds. The chapter also shows that the alleged attempts against the other government officials with the exception of Seward, were faked. Millard copied my story.

CHAPTER XVI

I found that to Mrs. Surratt, the only woman prisoner, a promise of clemency was held out to keep her from talking.

Millard, without any other source but myself, copied my statement that a promise of clemency was held out to Mrs. Surratt.

These are some of the main points which demonstrate that the whole construction of Millard's article is a plagiarized copy of "Why Was Lincoln Murdered?"

Other plagiarized parts of his article also were taken from "In The Shadow of Lincoln's Death," but have less bearing on its general structure.

• • •

The following is a short summary of some of the newly discovered facts set forth in my two books, and appropriated by Millard.

A letter by Mrs. Lincoln asking for appointment of John F. Parker.	Copied verbatim by Millard.
The strange and heretofore unknown career of John F. Parker.	Copied almost verbatim by Millard.
Premature publications of Lincoln's death.	Copied almost verbatim by Millard.
Discovery of a timetable, showing that Grant's excuse for leaving Washington was spurious.	Copied almost verbatim by Millard.
Discovery that Stanton and Eckert lied about their prospective activities that night.	Copied almost verbatim by Millard.
Discovery of an affidavit by Forbes that he was in Lincoln's box that night.	Copied verbatim by Millard.
Discovery that the editor Hanscom delivered a letter to Forbes in the box.	Copied almost verbatim by Millard.

Discovery that Miss Harris, Major Rathbone and Captain McGowan later changed their eye-witness accounts, and the probable reason—a command from higher-ups.	Copied almost verbatim b Millard.
The unexplained failure to secure the testimony of Parker, Forbes and Hanscom.	Copied.
The disclosure that Pitman's official record of the trial was deliberately falsified.	Copied.
Discovery of an important police blotter in Washington.	Partly copied.
Discovery that intelligent pursuit of Booth was discouraged, or stopped:	Copied.
Through retention of Captain Gleason.	Copied.
Through wilful delay of sending out news.	Copied.
Through delay in giving out the name of the assassin.	Copied.
Through an apparent influencing of the agent of the Associated Press.	Copied.

Through sending troops in pursuit where Booth was most unlikely to go.	Copied.
The strange failure to investigate a two-hour interruption of the wire service.	Copied.
Discovery of a diary kept by one of the pursuers.	Copied verbatim.
Discovery of Baker's intention to find a substitute for Booth.	Copied verbatim.
Discovery by authoritative opinions on the illegality of the conspiracy trial.	Copied verbatim.
A description of the Surratt farm.	Copied almost verbatim.
The fact that a promise for clemency was held out to Mrs. Surratt.	Copied.
The fact that Baker sent a telegram to the Dry Tortugas.	Copied.
The fact that the ads in the Washington Evening Star printed Lincoln's name in smaller type than Grant's.	Copied.
Interpretation of the strange fact of Stanton's refusal to let Eckert protect Lincoln.	Copied.

The strange fact of Stanton's perjury about Lincoln's last visit to the War Department.	Copied.

Among the speculations offered by me and copied by Millard are:

That Grant was not overly anxious to see his children and why.	Copied almost verbatim.
The inexplicable fact that Forbes never was questioned.	Copied.
A new interpretation of the message Booth gave to Lloyd.	Copied.
The fact that Parker was kept on the police force as long as Stanton remained Secretary.	Copied.
A new explanation for the premature arrests of Arnold and O'Laughlin.	Copied.
Why three Confederate soldiers, as well as Cox and Jones, all of whom had aided Booth, remained unpunished.	Copied.
The odd surprise of a dying man when he hears his name spoken.	Copied almost verbatim.

My speculation that Lincoln was shot at 10:13 PM.	Copied.
My conclusion that the conspirators left tell-tale clues behind them.	Copied almost verbatim.
That the route the assassin took was the only logical route he could have taken.	Copied.
That Fletcher's testimony had never been investigated and what a close investigation indicated.	Copied.
My surmise that Stanton hated Lincoln and that he and the Radicals stood to profit by his death.	Copied.

This last speculation is the underlying thesis of my two books, particularly of *"Why Was Lincoln Murdered?"*. It was novel and bold in conception, but sustained by the foregoing facts and surmises. In appropriating my thesis, Millard practically appropriated my books. Even admitting that he might have looked up some of my references, thereby avoiding infringement of copyrights, he stands guilty of weaving all of my new facts and speculations into a story which closely parellels mine.

To fill out his story, he used standard material, which has been written up many times, but in which no writer, previous to myself, saw an unsolved mystery. It is safe to say that without my new material and its interpretations, his story would have lost its punch, and would not have been accepted.

According to Daigh's testimony, "An unsolved murder has better than average salability."

These are some of the main points which demonstrate that the whole construction of Millard's article is a plagiarized copy of "*Why Was Lincoln Murdered?*" (Other plagiarized parts of his article also were taken from *In The Shadow of Lincoln's Death,* but have less bearing on its general structure.)

My two books were the outcome of about 18 years of intense research, undertaken with much labor and at the expense of thousands of dollars. I was the one who discovered in the Archives of the Provost-Marshall's office in Washington the file containing the original documents relating to the assassination, none of which had been known to exist prior to my discovery. I received permission from the then Secretary of War Dern, to study and photostat them. With the help of two stenographers I copied the essential portions of these documents, assorted them, and suggested precautions against future thefts.

For many years I engaged a secretary for the single purpose of carrying on a wide correspondence in search of original material, and for over a year I hired three assistants to help her. In addition, I had several investigators working for me on special missions, in Washington, D.C., Macon, Ga., Berkeley, Cal., Burlington, Vt., and other places. I had to take many trips, and spent a great deal of money in buying rare books and manuscripts, which I otherwise would not have been allowed to use. The O'Beirne papers alone cost me $850.00. I estimate that my cash expenses, *aside from the acquisition of books and manuscripts,* amounted to about $16,000.00.

The manual labor of absorbing, co-ordinating and assorting my material was considerable, and the essential thesis was not developed without a great mental strain.

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In view of all these facts and considerations, I believe that I am entitled to full damages in accordance with the law.

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PLAINTIFF'S EXHIBIT 21.

LIBRARY OF CONGRESS

Copyright Office Of The United States Of America
Washington

Certificate Of Copyright Registration

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Act respecting Copyright approved March 4, 1909, as amended by the Act approved March 2, 1913, that Two copies of the Book named herein have been deposited in this Office under the provisions of the Act of 1909, together with the Affidavit prescribed in section 16 thereof; and that registration of a claim to copyright for the first term of 28 years from the date of publication of said book has been duly made in the name of [over]

(Reverse Side)

Otto Eisenschiml
Chicago, Ill.

Title of book: Why was Lincoln Murdered? By Otto Eisenschiml, of United States, with Illustrations.

Date of publication Mar. 26, 1937.

Copies received Mar. 27, 1937.

Affidavit received Mar. 27, 1937.

Entry: Class A, No. 104467.

(Seal)

C. L. Bowie
Register of Copyrights.

PLAINTIFF'S EXHIBIT 22.

Additional Certificate (17 U.S.C. 215)

Class A No. 144677

COPYRIGHT OFFICE
Of The United States Of America
The Library Of Congress :: Washington

CERTIFICATE OF COPYRIGHT REGISTRATION

This is to certify, in conformity with section 55 of the Act to Amend and Consolidate the Act respecting Copyright, approved March 4, 1909, as amended by the Act approved March 2, 1913, that TWO copies of the BOOK named herein have been deposited in this Office under the provisions of the Act of 1909, together with the AFFIDAVIT prescribed in section 16 thereof; and that registration of a claim to copyright for the first term of twenty-eight years for said book has been duly made in the name of

Wilfred Funk, Inc.,
386 Fourth Ave.,
New York, N.Y.

Title: In the Shadow of Lincoln's Death.
By Otto Eisenschiml, of United States.

New York
Wilfred Funk, Inc.
1940

Printed or produced by Cornwall Press
Cornwall, N. Y.

Date of publication in the United States Sept. 24, 1940
Affidavit received Sept. 28, 1940
Copies received Sept. 26, 1940
(Seal) Arthur Eiler
Register of Copyrights

PLAINTIFF'S EXHIBIT 23.

Assignment of Copyright

WILFRED FUNK, INC.
PUBLISHERS

September 23, 1942

Library of Congress
Copyright Office
Washington, D.C.

Dear Sirs:

For consideration received, Wilfred Funk, Incorporated desires to assign to Otto Eisenschiml the copyright taken in the name of Wilfred Funk, Incorporated to the book, IN THE SHADOW OF LINCOLN'S DEATH, by Otto Eisenschiml.

We enclose check for $2.00 as fee for this assignment.

Very truly yours,
Wilfred Funk, Inc.
/s/ Douglas E. Lurton
Douglas E. Lurton
Vice President

DEL:RL
ENC.(1)
(Seal)

A

COPYRIGHT OFFICE OF THE UNITED STATES OF AMERICA

Library Of Congress—Washington

The foregoing assignment of copyright, dated September 23, 1942, and received for record in the Copyright Office on September 24, 1942, has been recorded in the

Copyright Office, book 492, page 112, in conformity with the laws of the United States respecting copyrights.

In Witness Whereof, the seal of this Office has been hereto affixed this second day of October, 1942.

Richard C. De Wolf
Acting Assistant Register of Copyrights.

(Seal)

The Act of March 4, 1909, sec. 44, provides: "That every assignment of copyright shall be recorded in the Copyright Office within Three Calendar Months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded."

PLAINTIFF'S EXHIBIT 24.

March 12, 1953

AIR MAIL REGISTERED
Return Receipt Requested

Mr. Ralph Daigh
Vice President and Editorial Director
Fawcett Publications, Inc.
67 West 44th Street
New York 18, N.Y.

Dear Mr. Daigh:

I am the attorney for Dr. Otto Eisenschiml, the author of *Why Was Lincoln Murdered?*, *In The Shadow Of Lincoln's Death*, and other writings, chiefly in the field of Civil War Literature. I happen also to be a student of Civil War literature myself, and have personal knowledge of the various matters mentioned hereinafter in this letter.

Immediately following the publication in the February 1953 issue of your magazine True, of the book-length feature, 'America's Greatest Unsolved Murder' by Joseph Millard, Dr. Eisenschiml began receiving letters and calls from friends and acquaintances, congratulating him upon the publication of the article, and inquiring as to why he used a pseudonym! Everyone assumed, as a matter of course, that the article was by Dr. Eisenschiml, because it was largely a paraphrase of the material which first appeared in his various writings on the assassination of Lincoln, and because much of the language was remarkably similar to that employed by him. Dr. Eisenschiml then read the article himself and was shocked by what he found. Thereupon he turned the matter over to me for legal attention.

I have delayed communicating with you until I could personally, as well as in association with Dr. Eisenschiml, make a complete checkup of the article in order to determine the full extent of the violations of his copyrights and plagiarisms of his writings. I have a long list, running into pages, of the most obvious and tell-tale copying by Mr. Millard from Dr. Eisenschiml's works. It is inconceivable that Mr. Millard could have derived his material from sources other than Dr. Eisenschiml's writings. Basically, and in details, the contents of the article, its substance, style and language, are derived from Dr. Eisenschiml's well-known writings.

Dr. Eisenschiml established a world-wide reputation as a student of the subject, because of the originality of his research, findings and speculations. Mr. Millard has simply helped himself to what belongs to Dr. Eisenschiml, who holds the copyrights in the books mentioned earlier in this letter.

The article refrains from mentioning Dr. Eisenschiml's name; it tries to conceal the borrowed sources, sometimes in the most clumsy fashion. Dr. Eisenschiml never gave permission to Mr. Millard for the use of his material and language.

This is so flagrant a case of violation of copyrights and plagiarism that we must insist upon full satisfaction. We shall expect to hear from you within the next very few days.

Very truly yours,
Elmer Gertz

EG:je

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PLAINTIFF'S EXHIBIT 27

XI / W 435 (PMG B) 1865 (Inked in margin)
Whig Press, Middletown N.Y.
Wednesday, April 19th, 1865.

AN IMPORTANT INQUIRY

Was the assassination of President Lincoln the result of a diabolical plot known to many in the loyal States? etc.

Rev. A. Seward (Inked in margin)

PLAINTIFF'S EXHIBIT 27-A.

Article from the WHIG PRESS, Middletown, N.Y.
Wednesday, April 19th. 1865.

An Important Inquiry.

Was the assassination of President Lincoln the result of a diabolical plot known to many in the loyal States?

The writer of this on last Friday, [April 14] at half past 2 o'clock, was informed that the President was shot, and it was currently so reported in the Village of Pine

Bush, in the town of Crawford, before 12 o'clock, M, of that day. Where did this report come from? Was it predicated upon a knowledge of what was to be done? Did some of the sons of Belial, alias the Sons of Liberty, let the matter out rather prematurely? Does it not evidence a wide-spread conspiracy with men at the North implicated therein? Was there not a deep and devilish meaning to the asseverations of some men among us, that Mr. Lincoln would never be President of the whole United States? And is not the Copperhead press, which has assailed our late President with an unfailing stream of malignant falsehood and defamation, as a tryant, imbecile and usurper—in fact, educated their readers to a malignant hatred of him—in some measure responsible for the deeds of their pupils?

PLAINTIFF'S EXHIBIT 29.

KIRKWOOD HOUSE,

SPRAGUE & CO.

Washington, D. C. July 20th 1865

Majr Jas. R. Osborne
Provost Marshall of the
District of Columbia
Dear Sir

Having on or about the
15th of April given information to the
Detectives then on duty guarding Mr
Johnsons room, of the suspicious
character in Room 126 of the Hotel
which on being searched proved to be

PLAINTIFF'S EXHIBIT 30.

The Gleason Story

Compare language in the original, Millard's version and mine.

On item 26, Millard's language again is suspiciously like mine, and quite different from that in the article which he claims was his source. (This also was my source, as given on footnotes in *Why*, page 114, and page 132.)

Article in Magazine of History	*Millard*	*Why*
It took a long time to reach General Augur's . . . I went . . . into a small room where several officers were, . . . told them all I knew . . . and . . . asked for a cavalry squad to go with me . . . But they thought I could be of more assistance in Washington . . .	At about that time Gleason burst into *Augur's headquarters begging* for a cavalry troop . . .	It could not have been much later when . . . Gleason put in an appearance at Augur's office . . . *He begged* to be given a mounted squad . . .
Sometime toward morning I was allowed to go back to my room . . .	Gleason *was flatly refused* . . . he was confined to Augur's headquarters the the remainder of the night . . .	But he . . . *was flatly refused,* . . . he was kept idling at headquarters until morning . . .

Note in particular the expression *"he was flatly refused"*, which did not appear in Gleason's article, but did appear in mine and Millard's. No unbiased critic will hesitate to conclude from which source Millard lifted it, together with the rest of the paragraph.

PLAINTIFF'S EXHIBIT 31.

The Gobright Story

Compare the original with my version and with Millard's.

GOBRIGHT	*MILLARD*	*EISENSCHIML*
"On the night of the 14th . . . I was sitting in my office alone, everything quiet. Having filed, as I thought, my last dispatch . . . a gentlemen addressed me . . . informing me that the President had been assassinated . . . I then went to the telegraph office, sent a short 'special' . . . taking a seat in the hack, we drove back to the theatre."	"One L. A. Gobright of the Associated Press was just closing his Washington office when the terrible news came. Rushing out, he quickly wired his papers . . . From there Gobright hurried to Ford's theatre . . ."	"L. A. Gobright, agent of the Associated Press, was about to close his office when he was informed of the tragedy. Rushing to the telegraph office, he sent a short special . . . He tore over to Ford's theatre."

Comparison between these three versions speaks for itself.

732

NOTICE

(Filed Dec 28 1955)

You are hereby notified that I have prepared my report under order of reference heretofore entered in the above entitled cause and that I have entered a rule upon all parties to file objections if any to said report on or before Jan. 23, 1956 at which time I shall take up and hear argument of counsel upon any objections that may be filed to my report.

Dated Chicago, Illinois, 27th day of Dec., 1955.

Joseph A. Graber,
Special Master in Chancery

733 * * * SPECIAL MASTER'S REPORT
UNDER ORDER OF REFERENCE

To The Honorable Phillip Sullivan, Judge Of The U. S. District Court, Northern District of Illinois, Eastern Division:

I, the undersigned, Joseph A. Graber, Special Master in Chancery of the United States District Court, Northern District of Illinois, Eastern Division, to whom the above entitled cause was heretofore referred to take testimony and report the same to this court, together with my findings of fact and conclusions of law thereon, do now submit the following report.

Pursuant to the order of reference entered in the above entitled cause, I was attended at the hour of 10 A.M., November 17, 1954, in the Federal Building at Clark & Adams Sts., Chicago, Illinois, by the following attorneys of record:

Elmer Gertz, appearing on behalf of Plaintiff;

Kirkland, Fleming, Green, Martin & Ellis, by J. B. Martineau and Don H. Reuben, appearing on behalf of defendant.

734 I have taken the testimony of Virginia M. Goldberg, Donald W. Riddle, Otto Eisenschiml, Thomas W. Naughton and Ernest Samuels.

Said witnesses were first duly sworn according to law and their testimony reduced to writing, the annexed transcript being a true, correct and complete transcript of the testimony taken by me in the above entitled cause.

I have admitted in evidence certain documentary evidence as shown by the transcript of testimony.

Included in the evidence admitted by me are the depositions of Joseph Millard, Mrs. Joseph Millard and Ralph

Daigh, all of which were taken in New York City by the parties hereto, prior to the reference.

Said depositions were sealed and filed with the Clerk of the court and by stipulation of the parties, I broke the seals and have read the depositions.

The various documents, instruments in writing described in said transcript of testimony were duly offered and received in evidence herein, and marked as exhibits as set forth in said transcript and said transcript with said exhibits contains and comprises all the evidence introduced and all the proceedings had on the hearings of this
735 cause, and are returned herewith and made a part hereof as the said transcript of testimony. No evidence was received by me or offered before me other than shown by said transcript of testimony and said exhibits.

I.

1. The complaint filed September 16, 1953 contains two counts. In Count I, it is alleged that the complainant is a citizen of the United States, and that he created and wrote an original book entitled "Why Was Lincoln Murdered," which was then copyrighted in accordance with the statute.

2. Thereafter, and in February 1953, the defendant, Fawcett Publications, infringed plaintiff's copyright by placing upon the market a work entitled "America's Greatest Unsolved Murder," which appeared in the February 1953 issue of True Magazine which is published by the defendant. The plaintiff prays for an injunction, an accounting, and an impounding of all copies of the article held by the defendant, together with all the equipment necessary to produce the alleged infringing article.

3. Count II makes a similar charge and asks for similar relief in connection with another book entitled "In the Shadow of Lincoln's Death," which the complaint alleges was written by plaintiff and published in 1940.

736 4. In its answer, the defendant admitted publication of the article entitled "America's Greatest Unsolved Murder" in the February 1953 issue of True Magazine, but denied that either of plaintiff's books were original, and denied any infringement.

5. After issue was joined, plaintiff moved the court for a summary judgment and filed in support a voluminous affidavit, together with the three works involved. The defendant submitted a counter affidavit executed by Joseph Millard, the author of its article. Plaintiff's motion was denied.

6. Thereafter, plaintiff filed admissions and interrogatories and on September 20, 1954, the order of reference was entered.

7. The plaintiff introduced the above-mentioned summary judgment affidavit in evidence during the hearing, and later amended it on its face because he admitted it contained inaccuracies.

8. A summary of the three literary works involved is as follows:

A. Plaintiff's book, "Why Was Lincoln Murdered", is a hard cover book of 503 pages, of some 29 chapters, together with supplementary notes. The book concerns the assassination of Abraham Lincoln and the subsequent history of the persons involved. The hypothesis

737 that Lincoln's Secretary of War, Edwin M. Stanton, was implicated in the assassination is the principal theme of the book. The book is presented as a scholarly work and is extensively documented and footnoted.

B. Plaintiff's second book, "In the Shadow of Lincoln's Death" is another historical work of 415 hard covered pages, 14 chapters, and supplemented by extensive notations. One prominent reviewer described "Shadow" as a long footnote to the earlier work, "Why Was Lincoln Murdered." This book is also extensively documented.

C. Defendant's magazine article, "America's Greatest Unsolved Murder" consists of about 20,000 words. It appeared in the February 1953 issue of True Magazine which consists of a total of 120 pages, and is the longest article of that issue, aggregating about 18 pages of text in addition to some illustrations. Defendant's article may be described as a sensationally written tale of Abraham Lincoln's assassination and the fate of the assassins. It contains no footnotes, bibliography, or other documentation.

9. The following persons are either parties to this cause or testified on behalf of one of the parties:

A. Otto Eisenschiml, the plaintiff, is the author of "Why Was Lincoln Murdered" and "In the Shadow
738 of Lincoln's Death." He was born in Austria and was educated there as a chemist. Eisenschiml came to the United States as a young man and became active in lecturing and writing. He has written extensively in the Lincoln assassination field and testified that he has read every piece that has ever been published on that subject.

B. Fawcett Publications, Inc., the defendant, is a Delaware corporation engaged in publishing a number of magazines, among which is True. It purchased from Joseph Millard the article later published under the title, "America's Greatest Unsolved Murder," for $1850.00, edited it, and then published the resulting

manuscript in February 1953 issue of True Magazine.

C. Joseph Millard, a free lance author for some 25 years, wrote "America's Greatest Unsolved Murder." The work was the third article of Millard published by defendant Fawcett in connection with the Civil War. Millard testified on deposition that he did not copy any of the language appearing in the plaintiff's two books and only used them along with a vast amount of other data, as source material.

D. Thomas Naughton, a former employee of the defendant, edited Millard's article in his then capacity as Associate Editor for True Magazine. At the time
739 of his testimony he had severed his connection with the defendant and is now working for Argosy Magazine. His testimony concerned the genesis of Millard's article, Millard's past dealings with the defendant and the history of the editing and preparation of the article from the time it was first submitted to True Magazine until the time of publication.

E. Ralph Daigh, the Editorial Director and Vice President of defendant Fawcett, Publications, Inc., testified upon deposition as to the general procedure the defendant follows in preparing its magazine and accepting articles for publication.

F. Virginia M. Goldberg is Otto Eisenschiml's niece and was employed by him during the writing of his two works. Her testimony was offered to demonstrate that a substantial amount of time and money was expended by plaintiff to write "Why Was Lincoln Murdered" and "In the Shadow of Lincoln's Death."

G. Dr. Donald Riddle, called as an expert witness for plaintiff, is the head of the Division of Social Sciences at the University of Illinois, Chicago Under-Graduate Division at Navy Pier, and teaches American

History. Dr. Riddle has written material on Abraham Lincoln but does not claim to be an expert on the assassination, nor does he claim expert knowledge in English or in Semantics. Dr. Riddle has also done extensive work in studying and determining the tex-
740 tual history of the New Testament, which includes comparing the various gospels language to determine literary relationships. Dr. Riddle, who is a friend of both Eisenschiml and his counsel, testified at great length for Eisenschiml to the effect that in his opinion defendant's article was a literary copying of the Eisenschiml books.

H. Dr. Ernest Samuels testified as an expert on behalf of defendant. Dr. Samuels is a professor of English at Northwestern University, a corresponding member of the Massachusetts Historical Society. Dr. Samuels recently won the Guggenheim award for his biography of Henry Adams. One of his duties at Northwestern University has been to sit as a one-man court of review when students are accused of copying their English themes. Dr. Samuels spent some 75 to 80 hours analyzing the three works involved here and testified that his examination revealed that Millard's article was an independent literary creation and it did not plagiarize either of the Eisenschiml books.

10. The plaintiff, Otto Eisenschiml, has been a manufacturer, a businessman, an author and a lecturer. He graduated from the Polytechnical School of Vienna in Austria in 1901 and then came to the United States where he secured employment with the Carnegie Steel Company as a chemist. In 1912, he established in Chicago a chemical company of his own known as the Scientific Oil Com-
741 pounding Company. He devoted most of his time to

the enterprise from its inception until the end of World War I.

11. After World War I, Eisenschiml began seriously studying about the Civil War and lecturing upon chemistry. He has written a number of articles and books on the Civil War period and for his work received an honorary degree from the Lincoln Memorial University. In the early 1920's, while investigating the battle of Shiloh, Eisenschiml began to inquire as to the conduct of various individuals who were involved in the Lincoln assassination in one manner or another. The result of this inquiry ultimately led to the employment of research assistants and the writing of the first of the two books involved here, "Why Was Lincoln Murdered," which sold 22,000 copies, and the later work, "In the Shadow of Lincoln's Death," which sold 3600 copies. Eisenschiml is today regarded as one of the world's outstanding authorities on the assassination of Abraham Lincoln, and Millard testified that no competent author would write about the assassination without studying Eisenschiml's works.

12. Both of the Eisenschiml works were written for the scholarly world and were designed to provoke thought and inspire further work in the field. The books set forth a vast amount of historical facts, all of which are
742 scrupulously documented by reference to other works, official documents, newspapers, etc. Wherever possible Eisenschiml very closely paralleled or paraphrased his sources. All of the material presented is either accepted historical fact or inferences drawn from those facts. In scholarly circles, correct historical references themselves become historical fact.

13. "Why Was Lincoln Murdered" (Pltf.'s Exh. 1) has as its dominant theme and thesis the proposition that Edwin M. Stanton, former Secretary of War, was

implicated in the murder of Abraham Lincoln, and both the critics and the reading public so read the book. Both Riddle and Samuels, the two literary experts who testified also agreed that the work clearly attempts to demonstrate that Stanton was a party in crime to the assasination.

14. Prior to Eisenschiml, other authors had suggested that Stanton's role in connection with the assassination was exceedingly peculiar; and one historical expert, a Pulitzer winner (whom plaintiff cites with approval in his affidavit), states that Eisenschiml merely added to this body of writings.

15. "In the Shadow of Lincoln's Death" (Pltf.'s Exh. 2) is described by critics, and also by the plaintiff himself, as a long footnote to the earlier book. Although 743 the complaint sets up the claim of infringement of "Shadow" as it it were of equal importance and extent as the claim of infringement of "Why Was Lincoln Murdered," plaintiff volunteered upon direct examination that the latter book is the main subject of this suit.

16. The complaint alleged that the plaintiff is a citizen of the United States but this fact was not proved upon the hearing. Attention was directed to a Presidential Proclamation extending to subjects of Austria the privilege of securing an American copyright and it was then stipulated that the plaintiff is entitled to the protection of the American copyright laws, either as a resident alien, or as a subject of Austria.

17. Joseph Millard, age 47, has been a writer for twenty-five years. Unable to attend college because of a lack of funds, he entered the advertising business shortly after his graduation from high school. During his employment in the advertising field he did a considerable amount of writing and for the last sixteen years

has earned his living exclusively as a free lance author. Millard has written prolifically, having sold over a thousand stories by the time of his deposition. Until this suit, he has never been accused of plagiarism and his writing career will suffer serious damage if he is found guilty of copying.

744 18. Some fourteen years ago, Millard became a dedicated student of the Civil War period, as a result of an acquaintanceship with Manley Hellman, a well-known historical writer who roused his interest in writing about the period. In order to obtain historical background for his writings, Millard began, again some 14 years ago, to assemble a Civil War library which today aggregates a vast quantity of books, magazines and newspapers worth roughly several thousand dollars. During his deposition in New York, Millard produced some 100-odd different books and other material concerning the Civil War period, which he estimated was less than ten per cent of his total library. The remainder was then in storage in Philadelphia awaiting shipment to his new home.

19. Prior to buying the alleged infringing article, "America's Greatest Unsolved Murder," from Millard, the defendant, Fawcett Publications, had purchased and published two of his earlier writings concerning the Civil War. The first of these, "The Spy Who Saved The Union," concerned the exploits of one Felix Stidger, an undercover man who exposed the dangerous Copperhead Society called Knights of the Golden Circle, and was published by True in December 1945 (Deft.'s Exh. 4). As a result of this work, Millard was asked to address the Civil War Round Table of Chicago, an association of

745 distinguished men interested in the study of history and people of the Civil War. The plaintiff and his

which on being searched proved to be
letters. and from the things found in
the Room he was caught. I would like
you to give this due consideration and
if it is worth anything I hope to
receive it. this Statement I can
prove by two or three ~~Detectives~~ now
in the service of the Government.

Yours Most Respectfully
Michael Kenny
Bartender

counsel, Mr. Elmer Gertz, are members of the Civil War Round Table.

29. The second Millard story, "The Devil's Errand Boy," published in the July 1947 issue of True magazine, is about incidents in the life of Lafayette Baker, one-time intimate of Edwin M. Stanton and head of the Secret Service during the Civil War. In 1946, while engaged in doing research for this article, Millard met the plaintiff at his home, spending an hour and a half with him in his Civil War Library. After the meeting, Eisenschiml sent the following letter to Millard (M. Dep. 425; R. 1750):

"July 26, 1946.

"Dear Mr. Millard:

"I apologize for having caused you sleepless nights, but if it is any consolation to you, just think of the many sleepless nights I spent before I wrote my books on Lincoln's assassination. I knew I was playing with dynamite and could imagine the effect it would have on the historical community when I detonated it.

"I hope you don't mind the digging you'll have to do on Baker. Digging out historical facts is lots of fun, and if you strike something that has never been published before it gives you quite a thrill.

"The first result of your digging is already apparent. I had no idea that Baker and Sherman were on opposite sides of the fence during the Vigilantes period in San Francisco, but I think this is extremely
746 interesting. I have found Sherman's 'Memoirs' as unreliable as you have found them, although my criticism pertains to other chapters of his book, such as the battle of Shiloh. Sherman made a mess of things there, and instead of acknowledging it tried to lie himself out of them. He changed the map of Shiloh

time after time until 1881, showing troop concentrations where they should have been, but were not, etc. (This is not for publication.)

"I take it that Baker did not turn on Sherman for two reasons. In the first place, their interests did not clash; but when Baker was in full power, Sherman was out West, and there was no contact between the two. In the second place, Baker was a blustering coward at heart and would probably have licked Sherman's boots, knowing that Sherman was the stronger. We also know that Sherman kept away from Washington intrigues.

"What Stanton meant when he said 'one or two prisoners', defies explanation. The only suggestion I have is that Stanton as a lawyer always expressed himself so that he left a loophole for himself. You know that lawyers try to cover everything they can. Baker might have picked up someone else on the way to Washington, and Stanton probably did not want to be awakened in the middle of the night to interpret his order of 'one prisoner.'

"I am much obliged for your information on the Greek fire. It still does not make good sense to me, chemically speaking, and I'll appreciate anything further you run into.

"Since my two books came out I have been hoping against hope that someone else may take up where I left off and find additional material either in confirmation or in refutation. Nothing at all has appeared, so far as I know. Most historians being merely rehashers and both financially and mentally unable to do any digging of their own, my hope now rests in you. You have the curiosity that is the foundation of good research work and the persistency that must accompany it. I have received praise and

747 I have received abuse, neither of which has furthered the cause. What we want is the truth, and I don't care much whether I am shown to be right or wrong.

"So far as I know, only one man now is working on the assassination problem, and that is David Rankin Barbee of 2838—28th St., N.W. Washington, 8 D. C. He was editor-in-chief of the Washington Post and has a great deal of material most of which, he says, has never been published. I have great respect for Mr. Barbee, but I know nothing about his material. All I know is this: When my first book came out, he jumped all over me claiming that Stanton had nothing to do with the assassination; but lately he has apparently swung around to my way of thinking, and once he told me over the telephone that he had proof of a secret meeting between Stanton and Booth shortly before the murder. Barbee is 72 years old, in bad health and in worse humor, and would probably treat you very brusquely if he knew you were stepping into his field. There is merely an assumption on my part.

"Please keep me posted, and if I can be of any help to you do not hesitate to call on me.

"Cordially yours,

OE:nic (Signed) Otto Eisenschiml."

In turn, Millard, in "The Devil's Errand Boy" acknowledged Eisenschiml's contributions and encouragement, writing at page 75 of True Magazine for July 1947:

"Mr. Otto Eisenschiml of Chicago, the outstanding authority on Abraham Lincoln's death, has devoted a lifetime of intensive research to the subject. His two books—'Why Was Lincoln Murdered' and 'In the Shadow of Lincoln's Death'—are packed with his own sensational discoveries. Yet he feels the surface has barely been scratched."

21. Lafayette Baker's part in tracking down Lincoln's assassin, John Wilkes Booth, forms an important part
748 of "The Devil's Errand Boy" and while writing it, Millard conceived the idea of doing a later work on the Lincoln assassination itself. In the spring of 1951, Thomas Naughton, then an editor of True, suggested to Millard that he write his story of the assassination, as if it were a mystery that still remains unsolved. Naughton broached the idea to Millard because Millard was a known Lincoln student and because Naughton had obtained the inspiration for such a treatment of the Lincoln assassination from "The Devil's Errand Boy." Thereafter, Millard labored some three and a half months researching for the story, and another month in its actual writing. The finished manuscript was sent to defendant, Fawcett Publications, for acceptance or rejection probably in the early fall of 1951.

22. In writing of Lincoln's assassination, Millard relied upon the research he had already done in connection with his earlier two Civil War articles described above, "The Devil's Errand Boy" and "The Spy Who Saved the Union." During the period he was writing the three stories, he read all available material, going wherever possible to the original sources. Aside from using the various books in his collection, Millard engaged in research at the following places:

(a) The Library of Congress, where Millard worked around the Central Desk and from the vast files found there.

(b) The National Archives. While here collecting data, on occasions Millard would discuss various aspects of
749 the Civil War with David Rankin Barbee and the State Archivist of Tennessee.

(c) The New York Public Library. Millard was there assisted in his work by Vincent Vigilante who was in charge of the American History Room.

(d) The Chicago Historical Society, where Millard procured help from Dr. Paul Angle.

(e) The Abraham Lincoln Book Store in Chicago. Millard received some suggestions for his work from the store's proprietor, Ralph Newman. During one of these visits Newman apparently introduced him to Eisenschiml.

(f) The Public Library of Sarasota, Florida. The library was helpful within certain limits, containing some good southern Civil War material.

(g) The Public Library of Tampa, Florida. Millard found the best material from the southern side collected in this institution.

(h) The Public Library of Westwood, New Jersey, where Millard testified the Civil War collection was small but unusually helpful books were found because of the librarian's particular interest in the period.

23. Among the works Millard consulted prior to writing his article on the assassination were Eisenschiml's
750 two books, "Why Was Lincoln Murdered" and "In the Shadow of Lincoln's Death," from which he used certain information then presented as facts of history. He also consulted and used in connection with the story a number of other known works written by other acknowledged authorities. Some of these are:

"Personal Memoirs of U. S. Grant"; "Grant in Peace"; "History of the United States Secret Service"; "Diary of Gideon Welles"; "The Assassination of Abraham Lincoln and the Trial of the Conspirators"; "Recollections of Men and Things at Washington"; "Conspiracy Trial for the Murder of the President"; "Abraham Lincoln — The War Years"; "The Assassination of Abraham Lincoln"; "The Assassination of Abraham Lincoln and Its Expiation"; "Lincoln in the Telegraph Office"; "Reveille

in Washington — 1860-1865"; "The Death of Lincoln"; "Edward McMasters Stanton"; "Through Five Administrations"; "The Great American Myth"; and "The Assassination of Lincoln."

24. In addition to the use of various historical books and biographies, Millard, in preparing to write about the assassination, also read the Congressional Record, various historical journals, and pertinent newspaper stories of the period.

25. As originally written, Millard's article contained some 40,000 words and was called "History's Maddest Murder Case." Although he knew that the defendant did not publish articles aggregating more than 20,000 words, he wrote this longer story in the hope that it would be published in two parts. In accordance with the custom in the publishing of popular magazines, the article 751 did not contain either footnotes or a bibliography. This custom is followed by the plaintiff when he writes for such media. However, Millard's original manuscript, Deft.'s Exh. 1, contained in its body the following complimentary reference to the plaintiff:

> "Dr. Eisenschiml, probably the world's leading authority on the mysteries of the Lincoln assassination, has in one curt sentence treated Stanton's story to the respect it deserves. He writes 'It would be exceedingly interesting to have the name of the bell ringer who was so busy with other orders that he had the audacity to incur the ire of the all-powerful Secretary of War by postponing the repairs on what was then perhaps the most important doorbell in Washington.'"

26. When the defendant, Fawcett Publications, received Millard's article, Naughton called him and received permission to mark his manuscript. Naughton then edited

the story, reducing it from 40,000 to 20,000 words and changed the title to "America's Greatest Unsolved Mystery." In the course of his work, Naughton, who was unfamiliar with Eisenschiml's books, deleted the above described "bell ringer" anecdote and with it the reference to Eisenschiml. Millard was not consulted about any of the eliminations made and he did not discover the deletion of Eisenschiml's name until the article was finally published.

27. After Naughton completed his job of editing, the manuscript was given to Charles N. Barnard, another 752 associate editor of True for reading and comment. It was then given to Ken Purdy, the Magazine's Managing Editor, who, like Barnard, thought the story worthwhile and worthy of purchase. Finally, the edited story was given to Ralph Daigh, Fawcett's Executive Vice President, who read the comments of his editors and then approved the purchase of the article.

28. The manuscript was then photostated, illustrated and placed in Fawcett's files for approximately one year prior to actual publication because it was to be held for release in a February issue. The article was finally printed in late 1952 and appeared as the book-length feature of the February 1953 issue of True.

29. Millard received $1,850.00 for his work, in return for which, at the time of purchase, he executed the following agreement, Defendant's Exhibit 3:

AUTHOR'S AGREEMENT.

$1,850.00

Received from Fawcett Publications, Inc. the above mentioned sum as payment in full for the manuscript or work entitled History's Maddest Murder Case by Joseph Millard and all literary property and other

rights therein, including complete publication rights and the right to copyright same in the name of Fawcett Publications, Inc. and to make editorial changes therein deemed necessary.

The undersigned warrants the originality, authorship and ownership of said work; and grants to Fawcett Publications, Inc. the right to publish or authorize
753 the publication of the author's name and picture in connection with the publication of said work, or advertise same, including the right to publicize said work in such a way as Fawcett Publications may desire in connection with publication of said work. Sixty days after publication by Fawcett Publications, Inc. it will reassign to the author, upon written request, all rights in said work, except the right to publish same in original, digest or other form in magazines or periodicals. After reassignment of such rights, the author shall at all times cause the rights in said work reserved by Fawcett Publications, Inc. to be protected by proper copyright notice.

Dated: Jan. 30, 1952.

Joseph Millard

30. A similar agreement was signed by Millard before the defendant bought "The Devil's Errand Boy" and "The Spy Who Saved the Union." After receiving his check, Millard quickly turned to something else for he believed that in the light of the time and effort expended, he had lost money on the project.

31. "America's Greatest Unsolved Mystery" as written and finally published is an independent literary creation based upon Joseph Millard's independent research concerning the assassination of Abraham Lincoln. The article as contemplated and written tells a story of mystery, bafflement, horror and confusion in the framework

of historical fact. Written in a fictional vein, the work does not attempt to solve any of the supposed mysterious happenings of the assassination but only raises questions and surrounds the event with an aura of the unknown
754 and the supernatural. If any solution at all is offered to the riddles concerning Lincoln's assassination, it is the suggestion that strange forces and unavoidable fate were at work.

32. The only discernible resemblance between Millard's tale and Eisenschiml's work is that both make use in varying degrees and manners of certain historical facts. There is no similarity between the language, organization, structure, or literary purpose of the three works.

33. True is a magazine for popular reader consumption and has a general circulation. It is rarely, if ever, cited or used for scholarly purposes and both the plaintiff and Dr. Samuels testified they do not read the magazine. Both "Why Was Lincoln Murdered" and "In the Shadow of Lincoln's Death" were written for an entirely different group — the world of scholars and historians. Lincoln scholars who have requested permission of Eisenschiml to reproduce portions of his book were permitted to do so without even affixing his copyright notice to the material so published.

34. The plaintiff asserted in his affidavit supporting his motion for summary judgment that the publication by the defendant of "America's Greatest Unsolved Murder" destroyed the market for his works and prevented him from obtaining the publishing of another edition of both of
755 his books. Subsequent to the reference, however, Harper & Brothers published a book entitled "The Day Lincoln Was Shot," which deals with the assassination and appeals both to the general and scholarly public. This book has been enormously successful and is presently en-

joying a tremendous circulation. Upon cross-examination, the plaintiff conceded that he cannot sustain his claim that the Millard work seriously damaged his market and this charge has been withdrawn.

35. In recent years, a controversy has arisen among historians as to the accuracy of the reports of the Civil War, and Eisenschiml is a member of a group known as the "Revisionists" who propose a complete rewriting of the history of that era. Aside from this controversy, there has always been a great interest in the Civil War which is evidenced by the enormous number of writings concerning that portion of American history and the formation of study groups such as the Civil War Round Table. Judicial notice may be taken of the fact that in recent years the interest in the Civil War has increased to such an extent that a book club is to be formed to distribute Civil War material. Both of the authors' works involved here are merely part of this vast store of writings, and both Joseph Millard and Otto Eisenschiml has each in his own way contributed something to this large and ever increasing body of knowledge.

756

II.

From all of the evidence introduced in this cause, both oral and documentary, and from the files and records herein —

A. The court has jurisdiction of the parties hereto and of the subject-matter hereof.

B. The article "America's Greatest Unsolved Mystery" published by the Fawcett Publications in its February 1953 issue of True Magazine, did not in any way infringe upon any copyrightable material contained in the plaintiff's work, "In the Shadow of Lincoln's Death." "America's Greatest Unsolved Mystery" is an independent lit-

erary creation based upon independent research, and whatever use Millard made of plaintiff's work was a *fair use*, for Millard did not in any way infringe upon plaintiff's market, wrote for a totally different purpose and had no intention to copy, plagiarize or imitate.

C. The article "America's Greatest Unsolved Mystery," published by the defendant, Fawcett Publications, in its February 1953 issue of True Magazine, did not in any way infringe upon any copyrightable material contained in the plaintiff's work "Why Was Lincoln Murdered." "America's Greatest Unsolved Mystery" is an independent literary creation based upon independent research, and whatever use Joseph Millard made of
757 Otto Eisenschiml's work was a *fair use*, for Millard did not in any way infringe upon Eisenschiml's market, wrote for a totally different purpose, and had no intention whatever to copy, plagiarize, or imitate.

D. Fair use may be defined as a privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner by the copyright (Story v. Holcome, Fed. Case No. 13497; Lawrence v. Dana, Fed. Case No. 8136, 16 So. Calif. L. Rev. 249). Fair use is allowed by law on the ground that the appropriation is reasonable and customary (Shapiro, Bernstein & Co. v. Collier & Son, 26 U.S. Pat. Q. 40). Ball, the Law of Copyright, Pars. 125, 126.

E. Plaintiff seeks to prove a copyright infringement by what he claims are parallel phrases and ideas. This theory appears from his affidavit in support of his motion for summary judgment, and in the evidence he introduced before the Master. Thus some 64 various fragments and phrases of the two separate Eisenschiml works are commingled and the resulting blend is compared, as if it were

but one copyrighted book, to Millard's article. Plaintiff asserts that any similarities that are found in the comparison occurred because Millard copied from Eisenschiml. Eisenschiml also tries to demonstrate that Millard copied various new ideas and facts from him which, he claims, he was the first to publish to the world. These alleged
758 new ideas and facts are set up in plaintiff's affidavit in support of motion for summary judgment as amended and from his testimony. The Master concludes that none of this evidence, which is plaintiff's whole case, shows a copyright infringement.

F. Most of plaintiff's case is based upon the comparison of sixty-four certain phrases appearing in his two works as commingled, with sixty-four phrases found in Millard's article. But it should be noted that in preparing these sixty-four alleged parallels, plaintiff in many instances not only fused together unrelated portions of the three works in question, but he also merged his comparison of his two books and the Millard story into one exhibit despite the fact that each of his two books is a totally separate cause of action. If parallels are to be used at all on the question of infringement, then the only fair and proper manner of demonstrating alleged parallels would be to make two separate comparisons. The first comparison should be between the thirteen phrases found in the "Shadow" book and the Millard article, and the second between the fifty-one phrases from the "Why" book and the Millard article. In setting forth both sets of alleged parallels, the plaintiff should not have omitted portions of the language involved. The fact that plaintiff has seen fit to proceed as he did has not been of any assist-
759 ance to the Master but rather has increased his labors and the time necessarily devoted by him to a consideration of this case.

G. The record is abundantly clear that although some of the Eisenschiml quotes that he claims were literally copied by Millard were in fact used only as source material by Millard, in all instances a parallelsim of language is practically non-existent. The relatively few similarities of language between the conflicting works quite clearly occurred either because of "verbal echoes" or because of a similarity of historical subject-matter. Many of the parallels that Eisenschiml asserts were copied from him are relatively insignificant segments of his books. Thus, taking plaintiff's case at best, any portions of Eisenschiml's works Millard may have used were so insignificant as to call for an application of the doctrine of de minimis non curat lex. Finally, the plaintiff, by consenting to have a part of his work published by others without his copyright notice being affixed, has lost whatever copyright he may have had to that particular material (17 U.S.C.A., § 19; Miffin *v.* White, 190 U.S. 260; New York Life Insurance *v.* Wolf, 85 F. 2d 162).

H. Millard denied under oath that he copied the sixty-four alleged parallels of Eisenchiml and the 760 only evidence offered in contradiction by plaintiff was the opinion evidence of Dr. Ronald Riddle. Although Riddle testified there was little if any language copied, he gave it as his opinion that Millard derived the sixty-four items from Eisenschiml, because all of the material contained in the parallels was readily available in Eisenschiml's two works and Millard was probably too lazy to research elsewhere. Upon reconsideration Riddle conceded that if Millard testified that he had researched elsewhere, then Riddle's assumptions were null and void. Further, Dr. Riddle also found from his examination that Millard did research other sources and thus his probability theory is patently meaningless.

I. Parallel analysis should be used in copyright suits with great caution for literary authorities and the courts have pointed out that parallels are misleading and may be completely valueless. Funkhouser *v.* Loew's, 208 F. 2d 185, 189. "Parallel hunting" (as it is called by some writers) may find likenesses when none exist; it totally ignores differences that might render the parallel meaningless; it dismembers a literary work instead of treating it as a unified whole which must be done for a proper critical analysis; and it ignores the possibility that both authors derived from a common source.

J. For the foregoing reasons, the sixty-four alleged instances of parallelism cited by the plaintiff do not 761 demonstrates a plagiarism or a copying by Joseph Millard and his use of some of the plaintiff's sixty-four quotes as source material was a fair use and non-actionable.

K. Eisenschiml also contends his copyright was infringed upon because the Millard article makes use of a number of new facts and ideas of history that were allegedly first published in the Eisenschiml books. This claim is set forth in plaintiff's affidavit as amended. It is plaintiff's position that without either his permission or a completely independent examination of the sources, no author can state such historical matters as the historical fact that Lincoln was shot at 10:13 P.M., on April 14, 1865; that there was a mystery about Lincoln's death, or that radical Republicans and Edwin M. Stanton stood much to gain by Lincoln's assassination. Approximately some 30 odd historical facts are given in plaintiff's affidavit as material that cannot be discussed or mentioned by other authors without infringing upon his copyright. It is clear, however, that no grounds for infringement exist even if Millard is indebted to the plaintiff for all of these ideas and facts.

L. The law of copyright does not protect ideas but only an author's mode of expression. Holmes *v.* Hurst,

174 U.S. 82; Dymow *v.* Bolton, 11 F. 2d 690; Sheldon
762 *v.* M.G.M., 81 F. 2d 49. The rule is particularly appropriate in the field of history and it is pure superarrogation for one to suggest that he has any proprietary interest in any era of history, particularly a period that is as extensively written about as the Civil War. Oxford Book Co. *v.* College Entrance Book Co., 98 F. 2d 688; Funkhouser *v.* Loew's, 208 F. 2d 185. In scholarly circles a particular theory or idea may after a time become identified with the individual first espousing it and if so, it is a departure from scholarly practice to discuss the idea without crediting its originator. The plaintiff has confused this protocol with the copyright law. To adopt plaintiff's contentions here would be to stifle thought.

M. The plaintiff's case lacks any merit whatsoever and thus, pursuant to Title 17 U.S.C.A., § 116, the defendant is entitled to recover a reasonable attorney's fee from the plaintiff as well as all costs of this suit.

CONCLUSION

1. I therefore respectfully recommend that the court enter judgment for the defendant.

2. That the plaintiff be taxed all costs of this proceeding including payment of a reasonable attorney's fee.

Respectfully submitted,

Joseph A. Graber
Special Master in Chancery,
U. S. District Court,
Northern District of Illinois,
Eastern Division

763 I, Joseph A. Graber, Special Master in Chancery in the United States District Court for the Northern District of Illinois, Eastern Dixision, do hereby certify that I have performed the following services under the order of reference heretofore entered in the above entitled cause:

Examining and considering the complaint, the answer thereto; affidavit and exhibits attached thereto, and defendant's answer thereto, plaintiff's motion for summary judgment and affidavit with exhibits attached thereto; defendant's answer to same and the court's ruling thereon, plaintiff's requests for admissions and the defendant's response thereto, plaintiff's brief in support of his motion for summary judgment, the court's ruling thereon and order of reference entered.

Hearings were had on various dates from November 17, 1954 to December 21, 1954, on which date proofs were closed. Time spent on hearings was fifty-four hours. Reading and considering the testimony (Depositions 595 pages, and testimony heard by the Master, 2550 pages), examining and considering the forty-two (42) exhibits offered on behalf of the parties hereto, consisting of many hundreds of pages, examining and considering the respective proposed findings and suggestions of the parties, 764 examining authorities and preparing the Master's report and findings thereon; in all expending one hundred eighty-five hours (185) and, in addition thereto, the fifty-four hours spent in attending hearings, making a total of two hundred forty hours (240). The parties hereto have deposited with the Master the sum of Three Thousand Dollars ($3000.00) for fees and I respectfully ask the court to allow the additional sum of Three Thousand Dollars ($3000.00).

Respectfully submitted,

Joseph A. Graber
Special Master in Chancery,
U. S. District Court,
Northern District of Illinois,
Eastern Division

765 A copy of the letter mailed to the following attorneys Dec. 27, 1955:

UNITED STATES DISTRICT COURT
Office of the Clerk
United States Court House
Chicago 4
December 28, 1955

Mr. Elmer Gertz
120 South LaSalle St.
Chicago, Ill.

Kirkland, Fleming, Green, Martin & Ellis
33 North LaSalle St.
Chicago, Ill.

53 C 1912
Otto Eisenschiml
vs.
Fawcett Publications, Inc.

Dear Sirs:

Pursuant to Rule 53(e)(1) of the Rules of Civil Procedure for District Courts of the United States you are hereby notified that the Honorable Joseph A. Graber, Special Master in Chancery, filed his Report, a copy of which is attached, on December 28, 1955.

Yours very truly,
Roy H. Johnson
Clerk
By Thelma Benson
Deputy Clerk

766

NOTICE OF FILING OBJECTIONS TO SPECIAL MASTER'S REPORT, CERTAIN EXHIBITS AND SUGGESTED FINDINGS
(Filed Jan 4—1956)

Pursuant to Rule 53 (e) (2) of the Rules of Civil Procedure for District Courts of the United States, you are hereby notified that the plaintiff, Otto Eisenschiml, is this day filing with the Clerk of this Court his objections to the Report of the Special Master (filed with the Clerk on December 28, 1955), a copy of which objections is hereto attached and served upon you; and the plaintiff will make application to the Court for action upon the report and upon objections thereto as prescribed in Rule 6 (d).

Please take further notice that with the said objections the plaintiff is filing as a part thereof the original of his Suggested Findings of Fact and certain exhibits
767 which were received in evidence but were not in the possession of the Special Master when he considered, prepared and filed his said report.

January 4, 1956.

* * *

768

EXCEPTIONS OF PLAINTIFF TO SPECIAL MASTER'S REPORT

Now comes Otto Eisenschiml, the plaintiff in the above entitled cause, by Elmer Gertz, his attorney, and objects to the report of the Honorable Joseph A. Graber, Special Master herein, filed in the office of the Clerk of this Court on the 28th day of December, 1955, in the following particulars, to wit:

1. To the following findings of facts and to each and every part thereof (the numbering being as in the Special

Master's Report): 4, 6, 7, 8A, 8B, 8C, 9C, 9D, 9E, 9F, 9G, 9H, 12 to 35, both inclusive.

2. To each and all of the conclusions of law, identified in the Special Master's Report by the letters A to M, both inclusive.

3. To the conclusion on page 30 of the Special Master's Report, and to each and every part thereof.

769 4. To the statement on page 2 of the Report that "Included in the evidence admitted by" the Special Master is the deposition of "Mrs. Joseph Millard . . . taken in New York City by the parties hereto, prior to the reference", because said deposition was taken on written interrogatories and cross-interrogatories on Sarasota, Florida, after the order of reference and the commencement of the hearings herein, and because the facts with respect thereto are as set forth in Plaintiff's Suggested Findings of Fact No. (75), heretofore filed with the Special Master and incorporated here by reference with the same force and effect as it set forth herein in full.

5. To the statement on Page 3 of the Report that all of the exhibits are filed with the Report and made a part thereof, because in fact the Special Master never gave the opportunity to the plaintiff to file Plaintiff's Exhibits Nos. 4, 15, 20, 21, 22, 23, 24, 25, 27, 27A, 28, 29, 30, 31 and 32, and prepared and filed his Report without having said exhibits or any of them before him or having given any consideration to them. The Special Master not having a regular office or place of business, plaintiff's attorney wrote to him at his then residence on July 15 and July 29, 1955, September 1, 1955, and October 13, 1955, and also telephoned him on several occasions, to make arrangements to file the said exhibits with him and to substitute the original of the Plaintiff's Suggested Findings

of Fact in place of the carbon copy that had been mailed to him. Said Master verbally advised plaintiff's at-
770 torney that he would arrange a time and place for such deposit, but in fact he never did so. Accordingly, the said Plaintiff's Exhibits and the said original of the Plaintiff's Suggested Findings of Fact are herewith filed with the Clerk of this Court. The pertinent excerpts from the said four letters of plaintiff's attorney to the Special Master are set forth in Exhibit "A", hereto attached and by express reference made a part hereof.

6. To the failure of the Special Master to make the findings of fact and each such finding set forth in the Plaintiff's Suggested Findings of Fact, a copy of which has heretofore been filed with the Special Master and the original of which is now filed with the Clerk of this Court and by express reference made a part of these exceptions with the same force and effect as if set forth herein in full.

7. To the failure of the Special Master to make the Conclusions of Law and each such conclusion set forth in the Plaintiff's Suggested Conclusions of Law, the original of which has heretofore been filed with the Special Master and a copy of which is hereto attached, marked Exhibit "B" and by express reference made a part hereof with the same force and effect as if set forth herein in full.

8. To the failure of the Special Master to strike and refuse to consider as having any legal or factual validity the following Defendant's Exhibits, and each of them,
771 and to his attaching substantial evidentiary and legal weight to them, and each of them, and basing his findings and conclusions thereon: Defendant's Exhibits 3 and 7 of its Millard Deposition of March 25, 1954 and following; Defendant's Exhibits 3, 4, 8, 9, 12, 13; De-

fendant's Exhibit 4 of May 16, 1955; Defendant's Exhibits 1, 2 and 3 of May 27, 1955.

9. To the failure of the Special Master to consider all of the admissions made by the defendant through its pleading, its partial responses to plaintiff's requests for admissions, its partial responses to plaintiff's interrogatories, its admissions and stipulations entered into during the course of the hearings before the Special Master, the stipulation as to The Civil War Round Table entered into following the close of proofs, and its failure to object to the various Plaintiff's Exhibits and particularly Plaintiff's Exhibits 7 and 20.

10. To the failure of the Special Master to find and conclude that costs and fees should be taxed against defendant, because of: (a) its failure to admit plaintiff's citizenship; (b) its unreasonably prolonged, repetitious and vexatious cross-examination of Dr. Donald W. Riddle; (c) the unreasonably prolonged examination and cross-examination of Joseph Millard resulting from the misleading display by defendant of a large number of books and much printed matter having no relevancy to the issues and from alleged source cards admitted as not necessarily listing the sources used by Millard; (d) the use 772 of Defendant's Exhibit 4 of May 16, 1955 in its original form; (e) the introduction in evidence by defendant of books and articles having nothing to do with the issues.

11. To the failure of the Special Master to consider any of the material set forth in Plaintiff's Objections and Responses to Certain Suggested Findings Proposed by Defendant and in Plaintiff's Additional Memorandum on "Fair Use."

12. To the failure of the Special Master to consider or attach any weight to the prevailing law in the United States Court of Appeals for the Seventh Circuit, and

particularly Toksvig *v.* Bruce Publishing Co., 181, F. 2d 664, decided on May 5, 1950, and Chicago Record-Herald Co. *v.* Tribune Association, 275 Fed. 797; and his failure to consider or attach any weight to any leading authorities other than those unapplicable cases cited by defendant, and particularly his failure to consider the following: Henry Holt & Co., Inc. et al *v.* Liggett & Myers Tobacco Co., 23 Fed. Sup. 302 (where the copying of only three sentences for commercial profit was held to be an unfair use); Associated Music Publishers, Inc. *v.* Debs Memorial Fund, Inc. et al, 141 Fed. 2d 852; Loew's Inc. et al *v.* Columbia Broadcasting Co., Inc. et al, 105 U.S.P.Q. 302, 308 ff. (decided May 6, 1955); Golding *v.* R.K.O. Pictures, 221 P 2d 95; Morse *v.* Fields, 104 U.S.P.Q. 54 (decided Dec. 1954); Adventures in Good Eating, Inc. *v.* Best Places to Eat, Inc. et al, 131 F. 2d 809-10, 56 U.S.P.Q. 773 242 (7th CCA, 1942); Dellar *v.* Samuel Goldwyn, Inc., 40 F. Supp. 534, 50 U.S.P.Q. 372; Hartfield *v.* Peterson, 34 U.S.P.Q. 305; Harris *v.* Miller, 50 U.S.P.Q. 261, and those other authorities cited in the documents filed by Plaintiff with the Special Master.

13. To the failure of the Special Master to find that since the Complaint was filed in good faith and with reasonable cause no attorney's fees should be assessed against plaintiff, but should be assessed against defendant.

14. To the failure of the Special Master to permit the plaintiff, as requested by him, to add approximately seventy additional parallels to the exhibit filed by defendant as an appendix to its Suggested Findings. (See Exhibit "A" hereto attached.)

15. To the failure of the Special Master to make findings, inter alia, as to the following (the details and supporting data for which are set forth in the parenthetically indicated Plaintiff's Suggested Findings of Fact):

(a) Exhibit "C", attached to Plaintiff's Exhibit 7, correctly sets forth in the first column thereof passages from the Millard book-length feature in defendant's magazine True and correctly sets forth in the second column thereof passages from the two Eisenschiml books in issue herein, all as admitted by defendant. (Pltf. Sugg. Find. No. 46)

(b) Defendant's letter to Charles E. Mason, admitting that it should have credited plaintiff. (Plts. Sugg. Find. Nos. 53 and 4C and Par. 24 of Pltf. Exhb. 7)

774 (c) Defendant never submitted Millard article to historians or authorities on the Lincoln Assassination prior to its publication, despite the recommendation of its own editorial staff that such be done. (Plf. Sugg. Find. Ns. 4g and 59)

(d) The long period of time in which defendant could have checked sources and sought for evidence of copying by Millard. (Plf. Sugg. Find. No. 40)

(e) The True circulation figures. (Plf. Sugg. Find. Nos. 4j and 4k and 54)

(f) Admissions that Millard and therefore defendant had access to plaintiff's books. (Plf. Sugg. Find. No. 5)

(g) The originality of the plaintiff's two said books. (Plf. Sugg. Find. Nos. 8, 12, 18, 19, 65)

(h) The matters and things proved as a matter of law through the copyright certificates themselves (nationality, originality, compliance with provisions of statute, etc.)

(i) The vast expenditure of labor, time, ingenuity and money by plaintiff in connection with his two books. (Plf. Sugg. Find. No. 16)

(j) Defendant must have known of Millard's indebtedness to and copying from Eisenschiml from its prior publication of Millard's Lafayette Baker article in July, 1947. (Plf. Sugg. Finds. Nos. 17, 4f)

(k) Plaintiff's notice to defendant of its infringement, and defendant's subsequent sale and advertisement of the infringing article (Plf. Sugg. Find. No. 23)

775 (l) The new factual material and the new interpretation of older material presented for the first time in plaintiff's two books and copied by defendant. (Plf. Sugg. Find. No. 25 and all sub-paragraphs thereof)

(m) The deductions, inductions, conclusions and speculations presented for the first time in plaintiff's two books and copied by defendant. (Plf. Sugg. Find. No. 26 and all sub-paragraphs thereof)

(n) The underscorings and markings in Plaintiff's Exhibits 1 and 2 (his two said books) as keyed to Exhibit "C" in Plaintiff's Exhibit 7 and the significance thereof. (Plf. Sugg. Finds. Nos. 27C and 28C)

(o) Adequate descriptions and summaries of plaintiff's two books. (Plf. Sugg. Finds. Nos. 27 to 45, both incl.)

(p) Tie-ins, or similarities, between plaintiff's two books and defendant's article, both on an over-all basis and in detail (Plf. Sugg. Find. Nos. 30 to 46, both incl., and particularly No. 46)

(q) The characters other than Stanton have relatively minor roles in both the Millard article and Eisenschiml's Why. (Plf. Sugg. Finds. Nos. 48 and 49)

(r) Millard closely followed or copied Eisenschiml's treatment of Stanton. (Plf. Sugg. Find. No. 50)

(s) Also his treatment of Lincoln. (Plf. Sugg. Find. No. 89)

776 (t) Also his treatment of Gen. and Mrs. Grant. (Plf. Sugg. Find. No. 90)

(u) Also his treatment of Booth. (Plf. Sugg. Find. No. 91).

(v) Also his treatment of Parker. (Plf. Sugg. Find. No. 92)

(w) Also his treatment of O'Beirne. (Plf. Sugg. Find. No. 93)

(x) Also his treatment of Miss Harris and Major Rathbone. (Plf. Sugg. Find. No. 94)

(y) Also his treatment of Fletcher. (Plf. Sugg. Find. No. 95)

(z) Millard copied or paraphrased substantially the very language of portions of plaintiff's books (including the so-called Quotes, or parallelisms, set forth in Plf. Sugg. Find. Nos. 57 and 91g and 94b).

(aa) The qualifications and testimony of Dr. Donald W. Riddle. (Plf. Sugg. Finds. Nos. 60 to 67, both incl.)

(bb) Millard's general attitude and state of mind on the use of sources indicates that he appropriated the plaintiff's research instead of doing his own research on the matters touched upon by plaintiff in his books. (Plf. Sugg. Find. No. 68) Millard's admission as to his lack of original research and lack of original material (Millard deposition pp. 201-2).

777 (cc) Millard admitted that various substantial portions of this article derived from Eisenschiml's books (Plf. Sugg. Find. No. 69). *E.g., at page 63 of the Millard Deposition, defendant's own counsel read Quote 22, and then asked Millard: "Did you steal or pirate that from Dr. Eisenschiml?" To this, Millard replied: "I am rather afraid I did . . ."*

(dd) Millard admitted that various portions of the cut-out or deleted part of his manuscript derived from Eisenschiml. (Plf. Sugg. Find. No. 70)

(ee) Neither Millard nor defendant ever asked or received permission to use the Eisenschiml material, and the article as published did not in any way credit Eisenschiml. But others (Sandburg, DeWitt and others) are credited in the Millard article. (Plf. Sugg. Find. No. 78)

(ff) The Parker story is a substantial part of both the Millard article and Eisenschiml's Why and is based upon the O'Beirne papers (*in the exclusive possession of Eisenschiml*) and the records of The Metropolitan Police Department (Eisenschiml being the first and most exhaustive student thereof). Millard admitted that he had never consulted the O'Beirne Papers or the Police records, and therefore must have gotten the material and very language from Eisenschiml. (Plf. Sugg. Find. No. 73)

(gg) Internal evidence of other copying by Millard from Eisenschiml. (Plaintiff's Exhibits 27, 27A, 28, 29, 30, 31, 32)

778 (hh) Millard's ignorance of well-known historical facts with respect to the Civil War. (Plf. Sugg. Find. No. 74)

(ii) The lack of qualification, the bias, incorrect standards and wrong notions of defendant's expert, Dr. Ernest Samuels. (Plf. Sugg. Find. Nos. 79 to 88, both incl.)

(jj) Dr. Samuels' admission that when he first saw the so-called 66 quotes he was amazed by the similarity between Millard's article and Eisenschiml's books, but his opinion was changed by Defendant's Exhibit 4 of May 16, 1955. (Plf. Sugg. Find. Nos. 80 and 81)

(kk) The same elements which Dr. Samuels found in the Millard Article are also found in the Eisenschiml books—dreams, flights of fancy and excursions into the occult (Plf. Sugg. Find. No. 83); use of unexplained mysteries. (Plf. Sugg. Find. Nos. 84 and 85)

(ll) Dr. Samuels' admission that the Millard borrowings do not exceed 5000 words, or 20 to 25% of the article. (Plf. Sugg. Find. No. 86)

(mm) Dr. Samuels admitted many similarities of language and other similarities between the Millard article and the Eisenschiml books. (Plf. Sugg. Find. No. 88)

16. To the Special Master's certificate as to his services and requested fees.
Dated January 3, 1956

* * *

EXHIBIT "A" OF EXCEPTIONS

779 EXCERPTS FROM PLAINTIFF'S ATTORNEY'S LETTERS TO SPECIAL MASTER JOSEPH A. GRABER

(a) From letter dated July 15, 1955 (copy to J. B. Martineau):

> "We are sorry to interrupt your summer golf and rest by the enclosed carbon copy of the plaintiff's suggested findings of fact. We are sending a carbon copy instead of the original because there are some corrections to be made and some insertions of pages in the transcript. At the end of the summer, or earlier, we can exchange the original, fully corrected, for the enclosed carbon."

(b) From letter dated July 29, 1955 (copy to J. B. Martineau):

> "The other day we received the suggested findings of the defendant, to which the plaintiff has considerable objection. As I told you, in an earlier letter, I am going to be out of town until August 21st. Immediately upon my return I shall discuss with the defendant's attorneys the arrangements in connection with objections to our respective suggested findings, briefs, arguments, etc. I shall also at that time send you the remaining exhibits. You will recall that the most important ones are already in your hands, namely, the two Eisenschiml books, the issue of True Magazine, the plaintiff's affidavit for summary judgment, and the various demands for admissions and interrogatories, and the depositions."

(c) From letter dated September 1, 1955 (copy to J. B. Martineau):

"We await word from you after you return to the city. At that time I can exchange your carbon copy of our suggested findings for the original thereof, and I can also deliver to you plaintiff's exhibits. Certain of the exhibits are already in your possession or in the court files and I would like to know whether or not you prefer that I assemble all of them so they will not be scattered."

(d) From letter dated October 13, 1955 (copy to J. B. Martineau):

780 "We are eager to give you the original of the suggested findings which we sent to you in carbon copy some while ago. We are also eager to pick up the exhibits so that we may assemble them for you. Finally, we would like to know your wishes with respect to the insertions of the 70 additional parallels in the typewritten appendix filed by the defendant."

EXHIBIT "B"

781

PLAINTIFF'S SUGGESTED CONCLUSIONS OF LAW

(Filed Jan. 4, 1956)

(Parenthetical references are to paragraphs in Plaintiff's Suggested Findings of Fact. The references are not complete.)

(1) Plaintiff's said two books are original books, contain a large amount of material wholly original with him, and are copyrightable subject matter under the laws of the United States. (Pars. 4a, 8, 12, 16, 17, 18, 19, 25, 26, 29, 30, 65).

(2) While no one may claim copyright in historical facts or ideas, plaintiff may claim a copyright in the arrangement, presentation, analysis, interpretation, expression and language of such facts and ideas.

(3) Millard, and through him the defendant, had full, complete and continuous access to plaintiff's said two copyrighted books and used them extensively in connection with the writing of his article. (Par. 5, 4(a), 17).

(4) Neither defendant nor Millard ever requested or received permission to use any copyrighted portions of plaintiff's said two books in connection with the said article. (Par. 72).

782 (5) The defendant made no efforts prior to the publication of the Millard article to determine whether or not the article infringed any copyrights of plaintiff or anyone else. (Pars. 4g, 58, 59).

(6) The defendant is fully liable for any copyright infringements contained in the Millard article, despite any contractual or other relations or arrangements it may have had with Millard or others.

(7) The defendant is fully liable for any copyright infringements contained in the Millard article, despite any alleged custom or usage in the popular magazine field not to cite or credit sources. No such custom or usage was proved herein, and, in any event, it is irrelevant to the issues herein.

(8) The defendant is fully liable for any copyright infringements contained in the Millard article, despite the so-called popular nature of its magazine, True. A popular publication has no more right to infringe copyrights than any other publication.

(9) Millard's article contains substantially the same treatment of, and language about, Stanton (Pars. 49, 50), Lincoln (Pars. 48, 89), Booth (Pars. 48, 91), the Grants

(Par. 90), John F. Parker (Par. 92), O'Beirne (Par. 93), Miss Harris and Major Rathbone (Par. 94), John Fletcher (Par. 95) and Atzerodt (Par. 48) as in the Eisenschiml books, and the said named persons are the principal characters in the Millard article as in the infringed portion of the Eisenschiml books.

(10) Millard's article follows the same general outline or pattern as the plaintiff's said two books, and contains the same material, and treats such material in the same manner as does plaintiff. (Pars. 30 to 47, both incl.)

783 (11) In Plaintiff's book, Why Was Lincoln Murdered?, as in the Millard article, there is similar use of dreams, flights of fancy and excursions into the occult (Par. 83) and similar handling of the mysteries (Pars. 84, 85, 25, 26).

(12) The copying from the plaintiff in the Millard article is substantial in quantity and quality (Par. 86, 88, 68, 69, 70, 71, 73, 55, 56, 57, 63, 65, 67).

(13) Millard's article is a slavish imitation, paraphrase and copy of substantial portions of plaintiff's said two copyrighted books.

(14) Neither defendant nor Millard made "fair use" of the plaintiff's copyrighted books. On the contrary, their use of said books was unfair, unlawful and improper.

(15) The defendant, through Millard, substantially appropriated the research of plaintiff. (Pars. 25, 26 and elsewhere)

(16) Defendant infringed plaintiff's said copyrights by publishing and placing upon the market the February 1953 issue of its magazine, True, containing the book-length feature entitled America's Greatest Unsolved Murder, which was copied largely from plaintiff's said two copyrighted books. (Pars. 20, 21, 24 to 50, both incl., 53,

56, 57, 63, 65, 67 to 71, both incl., 73, 76, 77, 86, 88 to 95, both incl.)

(17) Dr. Ernest Samuels, called as an expert by defendant, was not qualified as such, had improper standards for judging copyright infringement, and his testimony did not tend to prove that defendant's article was not substantially copied from plaintiff's said two books. (Pars. 79 to 95, both incl.)

(18) The defendant should be required to respond more specifically and fully to the plaintiff's requests 784 for admissions and to the plaintiff's interrogatories. (Pars. 3 and 4).

(19) Defendant should bear the costs and fees occasioned by its original failure to admit the citizenship of defendant, and the amount thereof should be determined at the hearing on profits and damages which has been reserved herein (Par. 7).

(20) Defendant's Exhibit 3 of March 25, 1954, Defendant's Exhibit 7 of March 25, 1954, Defendant's Exhibits 3, 4, 8, 9, 12 and 13, Defendant's Exhibit 4 of May 16, 1955, and Defendant's Exhibits 1, 2 and 3 of May 27, 1955, are not admissible in evidence, none having any relevancy in proving any of the issues herein and each being inadmissible for the reasons, among others, set forth in Pars. 96, 97 and 98 of Plaintiff's Proposed Findings of Fact.

(21) Defendant should bear the costs and fees occasioned by its improper use of a mass display of almost wholly irrelevant books and other printed matter, a series of alleged source cards (Defendant's Exhibit 7 of March 25, 1954), and the compilation of alleged common sources (Defendant's Exhibit 4 of May 16, 1955), for the reason that these improperly lengthened and complicated the hearings herein, and the amount thereof should be determined at the hearing on profits and damages, which

has been reserved herein. (Pars. 80, 81, 96, 97b, 97h, 73).

(22) A decree should be entered herein as prayed in the complaint, and the couse should then be rereferred for hearing as to the costs, fees, damages, and profits.

* * *

785 * * *

786 PLAINTIFF'S SUGGESTED FINDINGS OF FACT

(filed January 4, 1956)

(1) Plaintiff Otto Eisenschiml's complaint herein against the defendant, Fawcett Publications, Inc., is in two counts: the one count alleging that the said defendant infringed the plaintiff's copyrighted book, Why Was Lincoln Murdered? (hereinafter sometimes referred to as Why?); the second count alleging that the said defendant infringed the plaintiff's copyrighted book, In the Shadow of Lincoln's Death (hereinafter sometimes referred to as Shadow); and both counts asking for injunctive relief, an accounting for profits, damages, attorney's fees and costs, all pursuant to the Copyright Act as Amended. The complaint has the usual jurisdictional and copyright infringement allegations; and, to the extent sustained by the record herein its allegations are set forth in detail hereinafter. The complaint was supplemented by plaintiff's motion for a summary judgment and plaintiff's affidavit in support thereof. (Introduced in evidence, without objection, as Plaintiff's Exhibit 7, Report of Proceedings, hereinafter called "Transcript", page 65.) To the extent sustained by the record herein, the allegations thereof are set forth in detail hereinafter. (Sometimes hereinafter Plaintiff's Exhibit 7 is described as Plaintiff's Affidavit.)

787 (2) By its answer to plaintiff's complaint, defendant (A) *Admits*:

a) That it is a corporation incorporated under the laws of the State of Delaware.

b) That this action arises under the copyright law of the United States.

(c) That it published an article entitled, America's Greatest Unsolved Murder in its February, 1953, issue of True Magazine.

d) That it received copies of the books Why Was Lincoln Murdered? and In the Shadow of Lincoln's Death from the plaintiff.

e) That it received notification from the plaintiff that it has infringed alleged copyrights of plaintiff.

(B) *Claims* it has neither sufficient information nor belief to answer certain allegations and demands strict proof thereof, and fails to answer or denies all of the remaining allegations of the complaint.

(3) Plaintiff served copies of his Requests for Admissions on defendant's attorneys on February 17, 1954, February 26, 1954, and September 7, 1954, respectively; the request served on the first mentioned date incorporating therein by reference the plaintiff's said affidavit in support of his motion for summary judgment. These were received in evidence, without objection, as plaintiff's exhibits 6, 7, 9 and 10 (Transcript pages 64, 65, 75-6, and 77-8). The defendant made partial responses to these requests under the dates March 1, 1954, March 8, 1954, and November 17, 1954, respectively, which partial responses were filed herein on or about the said dates and were marked for identification only as Plaintiff's Exhibits 6-A, 9-A and 10-A (Transcript pages 67, 76 and 78). In addition plaintiff served upon defendant's attorneys on February 18, 1954 interrogatories addressed to defendant (Transcript page 72). These, too, were received in evidence, without objection,

as Plaintiff's Exhibit 8. The defendant made partial answers to these interrogatories under date of March 1, 1954. These partial answers were marked for identification only as Plaintiff's Exhibit 8-A. (Transcript pages 72-73). The plaintiff asked, and asks, for rulings requiring the defendant to respond more specifically and fully to the plaintiff's said requests for admissions and interrogatories.

(4) For the purpose of this action only, the defendant made the following admissions and answers to the plaintiff's various requests for admissions and interrogatories:

(a) Exhibit "A", attached to affidavit of plaintiff in support of his motion for summary judgment, heretofore filed herein and received in evidence as Plaintiff's Exhibit 7, and by this reference made a part hereof, is a true and correct photostatic copy of pages 73 to 77, both inclusive, of a book-length article, entitled The Devil's Errand Boy, by J. J. Millard, which appeared in the July, 1947 issue of defendant's magazine True.

(b) Exhibit "C", attached to the said affidavit (Plaintiff's Exhibit 7), and by this reference made a part hereof, correctly sets forth in the first column thereof, under the words, True Magazine, passages from the book-length feature by Joseph Millard, which appeared in the February, 1953 issue of defendant's magazine True, and correctly sets forth in the second column thereof, under
789 the words Otto Eisenschiml, passages from plaintiff's books, Why Was Lincoln Murdered? and In the Shadow of Lincoln's Death.

(c) The document annexed to paragraph 24 of the said affidavit, and by this reference made a part hereof, is a true and correct photostatic copy of a genuine letter from Fawcett Publications, Inc., to Mr. Charles E. Mason, 224 Washington Street, Waukegan, Illinois, dated

February 27, 1953, which letter is signed by Ralph Daigh, Vice-president and Editorial Director of defendant.

(d) Plaintiff wrote said books, Why Was Lincoln Murdered? and In the Shadow of Lincoln's Death.

(e) Joseph Millard is the same person as J. J. Millard, and is the author of the article, America's Greatest Unsolved Murder.

(f) At all times since the publication of the July 1947 issue of True, Ralph Daigh was, and now is, Editorial Director of said magazine.

(g) The defendant never submitted the said article, (America's Greatest Unsolved Murder) to historians or authorities on the Lincoln assassination prior to its publication. A member of the editorial staff of the defendant suggested in writing that the defendant submit said article to a historian or authority on the Lincoln assassination prior to its publication. The said suggestion was read by Ralph C. Daigh prior to the publication of the said article, and ignored by him.

(h) Plaintiff delivered to defendant's counsel the article by Professor Paul H. Buck, referred to in Paragraph 12 of plaintiff's said affidavit (Plaintiff's Exhibit 7).

790 (i) Plaintiff has made the claims of infringement set forth in Paragraph 17 of the said affidavit.

(j) The February 1953 issue of defendant's publication True was sold to the public at 25¢ per copy. For the February 1953 issue of True there was a gross circulation of 1,898,285 copies, subject to returns and to a further breakdown of subscription and newsstand sales. The gross advertising revenue was $184,571.00 and the net was $156,865.85.

(k) The net paid circulation of True for the January 1953 issue was 1,824,292. The net paid circulation there-

of for the March 1953 issue was 1,709,205. The average net paid circulation thereof for the six-month period ending June 30, 1953 was 1,739,088. The average net paid circulation thereof for the six-month period ending December 31, 1953 was 1,789,970.

(l) The February 1953 issue of True went on sale on January 21, 1953. The off-sale date for the February 1953 issue of True was February 20, 1953.

(m) The article, America's Greatest Unsolved Murder, by J. J. Millard, was one of the features of the February 1953 issue of True.

(n) The source of each of the sixty-six items (hereinafter called "quotes") set forth in Exhibit "C" of plaintiff's said affidavit (Plaintiff's Exhibit 7), as far as defendant was concerned, was Joseph Millard, whom defendant describes as "the independent author" from whom it "purchased the article in question as a piece of merchandise for the sum of $1,850.00 on or about January 30, 1952."

(o) Defendant first saw said Millard article containing said information on or about the month of De-
791 cember, 1951. Defendant does not know when the author, Joseph Millard, first saw said items or their sources.

(p) Defendant contends that the matters set forth in Paragraph 19 of the said affidavit (Plaintiff's Exhibit 7) are matters of historical fact and as such are part of the public domain over which no one may assert any ownership.

(q) Defendant contends that the items set forth in Paragraph 20 of the said affidavit are "deductions, conclusions and speculations," which are not the subject of ownership by copyright or otherwise.

(r) Defendant does not know what "sensational discoveries" said Joseph Millard had reference to in the

quotation from his article of July 1947 set forth in Paragraph 11 of the said affidavit (Plaintiff's Exhibit 7).

(5) There is no issue as to the defendant's access to the plaintiff's said two copyrighted books. Joseph Millard, the author of the article in the February 1953 issue of defendant's magazine, True, admitted that he had read and was familiar with both books before writing the article. Millard admitted he had read both books at least twice and that Why was part of the preparation for his article. (Millard deposition, p. 202). His familiarity with the said two books is, also, indicated by what he wrote earlier in the July 1947 issue of defendant's said magazine. (Exhibit "A" attached to Plaintiff's Exhibit 7).

(6) It was stipulated and agreed by and between the parties hereto, without prejudice, that the issues of damages and profits would be reserved until the Court has passed on the issues of infringement.

(7) From birth Eisenschiml has been continuously, and now is, a citizen of the United States; and was, at the time of the filing of the complaint herein, a citizen 792 of the State of Illinois. At each of the times mentioned in Counts I and II of the complaint he was a citizen of the United States. (Plaintiff's Exhibit 17 for identification—copy of letter from Secretary of State, Transcript page 354, Transcript pages 435 ff, Transcript page 441, Plaintiff's Exhibit 21—copyright certificate for Why?) By its answer and at the outset of the hearings herein, defendant placed the plaintiff upon strict proof of his citizenship. But after plaintiff presented a large number of documents to prove his citizenship and had gone to a good deal of trouble and his counsel had stated for the record that he was going to ask for the taxing of costs and fees, defendant conceded the citizenship of plaintiff or that it did not matter because of the reciprocity with Austria.

(8) Prior to March 26, 1937, Eisenschiml created and wrote an original book, entitled Why Was Lincoln Murdered? This book contains a large amount of material wholly original with him and is copyrightable subject matter under the laws of the United States. (Testimony of Riddle, Transcript pages 230 to 228, both incl., 377 to 381, both incl., Testimony of Eisenschiml, Transcript pp. 312-321, and Testimony of Virginia Goldberg, Transcript pages 1 to 62, both incl., Plaintiff's Exhibit 21, Copyright Certificate, Exhibits "A" and "B" and pars. 12 and 13 of Plaintiff's Exhibit 7, Deposition of Millard, pp.).

(9) Between March 26, 1937 and March 27, 1937, Eisenschiml complied in all respects with the Act of March 4, 1909, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 27, 1937, Class A., No. 104467." Plaintiff's Exhibit 21—Copyright Certificate of Why?

793 (10) Since March 26, 1937, the book has been published by Eisenschiml and all copies of it made by him or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of March 4, 1909, as amended, and all other laws governing copyright. (Plaintiff's Exhibit 21—Copyright Certificate for Why?)

(11) Since March 26, 1937 Eisenschiml has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book. (Plaintiff's Exhibit 21—Copyright Certificate for Why?)

(12) Prior to September, 1940, Eisenschiml created and wrote an original book, entitled In The Shadow of Lincoln's Death. This book contains a large amount of

material wholly original with him and is copyrightable subject matter under the laws of the United States. (Testimony of Riddle, Transcript pages 230 to 238, both incl., 377 to 381 Testimony of Eisenschiml, Transcript pages 312 to 321, both incl., Testimony of Virginia Goldberg, Transcript pages 1 to 62, both incl., Plaintiff's Exhibit 22—Copyright Certificate for Shadow, Exhibits "A" and "B" and pars 12 and 13 of Plaintiff's Exhibit 7).

(13) Between September, 1940 and October 2, 1942, Eisenschiml complied in all respects with the Act of March 4, 1909, as amended, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of the book, and received from the Register of Copyrights a certificate of recording of assignment of copyright from the original holder of the copyright, dated and identified as follows: October 2, 1952, Class A, Book 492, page 112 (Plaintiff's Exhibit 22—Copyright Certificate).

794 (14) Since September 23, 1942, the book has been published by Eisenschiml and all copies of it made by him or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of March 4, 1909, as amended, and all other laws governing copyright. (Plaintiff's Exhibit 22—Copyright Certificate; Plaintiff's Exhibit 23—assignment of copyright).

(15) Since September 23, 1942, Eisenschiml has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book. (Plaintiff's Exhibit 22—Copyright Certificate, Plaintiff's Exhibit 23—Assignment of Copyright Certificate).

(16) The work Eisenschiml did on Why Was Lincoln Murdered? involved about 18 years and the expenditure of about $20,000.00, in addition to his own time. Some of

the manuscripts, books, magazines and newspapers Eisenschiml had to acquire were very expensive and rare and their acquisition required extensive correspondence and research. He had to acquire hundreds of photostats at considerable expense. For several years he paid wages to investigators in Washington, Brooklyn, Pittsburgh, Cleveland, Crawfordsville, Indiana, San Francisco, Macon, Ga., Burlington, Vermont, Chicago, and other places. A special secretary worked for him for about several years, and two-full-time assistants aided her for about one year prior to publication. Trips to various parts of the country cost additional money and time. The secretary and her mother, for example, were with him in Washington for some time, searching through the files of the Provost Marshal's office, and taking notes. The cash expenses for In The Shadow of Lincoln's Death amounted to about $3,000.00 in addition to his own time. (Testimony of Virginia Goldberg, Transcript pages 1 to 62, both incl., Testimony of Eisenschiml, pages 300 to 310, both incl., Plaintiff's Exhibit 5 for Identification, Plaintiff's Exhibit 18 for Identification, Plaintiff's Exhibit 19 for Identification, Exhibits "A" and "B" and pars. 12 and 13 of Plaintiff's Exhibit 7, Plaintiff's Exhibit 20, Plaintiff's Exhibit 1, pp. 487-8, and Plaintiff's Exhibit 2, page XI and XII).

17) The defendant, Fawcett Publications, Inc., published in the July, 1947 issue of its magazine True, a book or book-length article, entitled The Devil's Errand Boy, by J. J. Millard, the same person who is the author of a book, or book-length article, entitled America's Greatest Unsolved Murder, about which complaint is made in the instant proceedings. At the time of the publication by defendant of both the July 1947 and the February 1953 books or articles by Millard, Ralph Daigh

was Editorial Director of the defendant's said magazine, with general responsibility therefor. In the July 1947 book or article, the following words appear, at p. 74, with respect to the assassination of Abraham Lincoln: "To recount only the known facts about the assassination would fill volumes—and leave most of the important questions forever unanswered. Mr. Otto Eisenschiml of Chicago, the outstanding authority on Abraham Lincoln's death, has devoted a lifetime of intensive research on the subject. His two books—Why Was Lincoln Murdered? and In The Shadow of Lincoln's Death (sic)—are packed with his own sensational discoveries. . ." The said article then sums up a number of the findings, analyses and surmises from the said two Eisenschiml books. There is attached to Plaintiff's affidavit for summary judgment, marked Exhibit "A" and made a part thereof and

hereof by reference, photostatic copies of pages 73 to
796 77, both inclusive, of the said July 1947 article.
(*Admitted.*)

18) (Same as par. 12 of Plaintiff's Exhibit 7—Appendix pp. 20ff.)

(19) Eisenschiml offered to supply books, reviews, letters, statements, and affidavits by leading historians, setting forth similar expert opinions with respect to Eisenschiml and his said two books. Typical of informed opinion are the words of Dr. Paul M. Angle, which appear on pages 122-124 of his book, A Shelf of Lincoln Books (published in 1946 by Rutgers University Press in association with the Abraham Lincoln Association). Dr. Angle is Director

of the Chicago Historical Society, formerly secretary
797 of the Illinois State Historical Library, and formerly

secretary of the Abraham Lincoln Association, and author of several leading works on Lincoln. In the said book Dr. Angle wrote:

(Same as quoted language in Exhibit "B" of Plaintiff's Exhibit 7—Appendix pp. 36-9)

(20) After March 27, 1937, defendant infringed affiant's copyright by publishing and placing upon the market a book entitled America's Greatest Unsolved Murder, which was the principal feature of the February 1953 issue of True, a magazine published by defendant, and which was copied largely from Eisenschiml's copyrighted book, entitled Why Was Lincoln Murdered? (Plaintiff's Exhibits 1 and 3 and the other findings hereof).

(21) After September 23, 1942, defendant infringed affiant's copyright by publishing and placing upon the market a book entitled America's Greatest Unsolved Murder, which was the principal feature of the February 1953 issue of True, a magazine published by defendant, and which was copied largely from Eisenschiml's copyrighted book, entitled In The Shadow of Lincoln's Death. (Plaintiff's Exhibits 1, 2 and 3 and other findings hereof).

(22) Plaintiff in his complaint offered to produce copies of his copyrighted books and a copy of defendant's infringing books and magazine at such time or times as shall be required by the court. Prior to the filing of suit, he gave to defendant's counsel marked copies of his said two books and filed other marked copies with his motion and affidavit for summary judgment.

(23) Prior to filing his suit, plaintiff notified defendant that defendant had infringed the copyrights of plaintiff, and defendant has continued to infringe the copyrights. Plaintiff, through Elmer Gertz, his attorney, wrote to defendant by air mail registered (return receipt requested) under date of March 12, 1953 and the said letter was
799 received by the defendant. (Plaintiff's Exhibit 24). This letter advised defendant that the Millard article, its substance, style and language, were derived from Eisen-

schiml's said two books. Notwithstanding this letter, defendant continued to sell copies of the issue of True containing the Millard article and advertised it on the front cover of the issue of January 1954 (Plaintiff's Exhibit 25), where facsimiles of the previous year's issue of True are displayed, with the infringing issue at the head of the page.

(24) Plaintiff prepared a compilation of parallel passages from his books and the Millard article, marked Exhibit "C", attached it to his Affidavit for Summary Judgment and made it a part thereof and of these findings by reference; said Exhibit "C" sets forth in the first column, under the words True Magazine, passages from the infringing book or book-length article published by defendants in the February 1953 issue of its magazine True, and sets forth in its second column, under the words "Otto Eisenschiml", passages from the plaintiff's said two copyrighted books, copied by defendant.

(25) The following is a summary of the new factual material or new interpretation of older material presented for the first time in plaintiff's two said copyrighted books, all of which was copied by defendant (Testimony of Riddle, Transcript pages 230 to 238, both incl.; Testimony of Eisenschiml, Transcript pages 312 to 321, both incl.)

(a) That there was a mystery about Lincoln's death; (This is tied in generally with Millard's article and the plaintiff's book, Why? Testimony of Eisenschiml Transcript p. 331).

(b) That Parker was a key figure (his background, which Eisenschiml disclosed, had never before been 800 laid bare); (this is tied in with quotes 13, 14, 15, 21, 34 and 34-A. Testimony of Riddle, Transcript p. 232; Testimony of Eisenschiml, Transcript p. 332.)

(c) That Mrs. Lincoln was responsible for Parker's appointment, and therefore could be, by a stretch of the im-

agination, said to have been under suspicion; (this is tied in with quote 15; Testimony of Eisenschiml, Transcript p. 318).

(d) That reports of Lincoln's death had been reported in various papers prior to the tragedy, giving examples; (this is tied in with quotes 1 and 3; Testimony of Eisenschiml, Transcript pp. 332, 321)

(e) The advertisements in the Washington newspapers, from which Millard drew his description, never had been reprinted (and Millard admitted he had never seen a reproduction, deposition p. 130) before, so far as known;

(This is tied in with quote 62;

Testimony of Eisenschiml, Transcript pp. 337, 319;

Testimony of Riddle, Transcript pp. 236-237.)

(f) The significance of the note which was handed to Grant at the White House on April 14, 1865; (This is tied in with Why, middle of page 61, and True, page 105, Col. II, paragraph 5.)

(g) The curious fact of Grant's evasiveness in his Memoirs;

(This is tied in with quotes 4, 5 and 6. Millard admitted that this was called first to his attention by Eisenschiml (Millard deposition, p. 467) and that he used it in his work (p. 468).

(Testimony of Eisenschiml, Transcript p. 335;

(Testimony of Riddle, Transcript, p. 234).

801 (h) Proof that Grant's excuse for leaving Washington was unfounded; (This is tied in with Quotes 5 and 6. Millard admitted that this was first brought to light and called to his attention by Eisenschiml (Millard deposition, pp. 467, 470).

(Testimony of Eisenschiml, Transcript pp. 335, 314.

(Testimony of Riddle, Transcript p. 234).

(i) Time-table showing that Grant gained practically nothing by taking an early evening train; (This is tied in

with Quote 7. Millard admitted that this was first brought to light or called to his attention by Eisenschiml. (Millard deposition pp. 467, 472).

(Testimony of Eisenschiml, Transcript, pp. 335, 314;
(Testimony of Riddle, Transcript, p. 234).

(j) The significance of Stanton's refusal to have Eckert act as Lincoln't bodyguard; (This is tied in with Quotes 9, 10 and 11)).

(k) Stanton's false oath about Lincoln not being at the War Department on April 14, 1865; (This is tied in with Quote 10.

(Testimony of Eisenschiml, Transcript pp. 334, 313.
(Testimony of Riddle, Transcript p. 233.)

(l) Stanton's and Eckert's false statements that they were busy at the War Department on the fatal night; (This is tied in with Quotes 9, 10 and 11.

(Testimony of Eisenschiml, Transcript pp. 333, 313.
(Testimony of Riddle, Transcript p. 233).

(m) The strange behavior of the editor Hanscom, and of the valet Forbes; (This is tied in with Quote 19.

(Testimony of Eisenschiml, Transcript p. 332;
(Testimony of Riddle, Transcript p. 232).

802 (n) The contradictory and evasive statements of Major Rathbone and Miss Harris; (This is tied in with Quote 22. Millard admitted that this was first brought to light or called to his attention by Eisenschiml (Millard deposition pp. 467, 473, 474).

(Testimony of Eisenschiml, Transcript pp. 333, 313;
(Testimony of Riddle, Transcript p. 232).

(o) The two divergent statements of McGowan; (This is tied in with Quote 20).

(p) The statement of the coachman Burns that he had taken Parker and Forbes for a drink; (This is tied in with Quote 21).

(q) The exact time when Booth fired his shots; (This is tied in with Quote 64.)

(Testimony of Riddle, Transcript p. 238;

(Testimony of Eisenschiml, Transcript p. 321).

(r) The fantastic clues left in Atzerodt's room; (This is tied in with Why, p. 168, and True, p. 112, Col. I, second half, Col. II, par. 3.

(Testimony of Eisenschiml, Transcript, pp. 338, 316;

(Testimony of Riddle, Transcript, p. 236).

(s) The contradictory stories of the livery man Fletcher, and the perversion of his testimony by the official recorder of the assassination trial; (This is tied in with Quotes 24 and 25).

(t) The wilful changes made in the official record of the trial made by Pitman and Judge Advocate Burnett; (This is tied in with Quote 23. Millard admitted that this was first brought to light and called to his attention by Eisenschiml (Millard deposition pp. 467, 474).

803 (Testimony of Riddle, Transcript p. 236;

(Testimony of Eisenschiml, Transcript p. 316).

(u) The fact that the pursuit of Booth was not undertaken in the right direction, and that the War Department neglected to follow Booth's trail after Fletcher's report; (This is tied in with Quotes 25, 26, 27, 32 and 43. Millard admitted that this was first brought to light or called to his attention by Eisenschiml (Millard deposition, pp. 467, 477, 479, 480).

(Testimony of Eisenschiml, Transcript pp. 337, 316;

(Testimony of Riddle, Transcript p. 236).

(v) The fact that the blotter of the 10th Street Police Station in Washington contained the names of witnesses and their statements; (This is tied in with Quote 24. Millard admitted that this was first called to his attention by Eisenschiml and that he has never seen the blotter (Millard deposition pp. 467, 481).

(Testimony of Eisenschiml, Transcript pp. 337, 321;
(Testimony of Riddle, Transcript p. 237).

(w) Captain Gleason's part in the story—that he knew where Booth had gone, but was refused cavalry, and was detained at headquarters:

(This is tied in with Quote 26;
(Testimony of Riddle, Transcript p. 236;
(Testimony of Eisenschiml, p. 316)

(x) The significance to Stanton's delay in broadcasting Booth's name until too late to reach the morning editions;

(This is tied in with Quote 28: Millard admits that this was first brought to light or called to his attention by Eisenschiml (Millard deposition pp. 467, 482, 484).

804 (Testimony of Eisenschiml, Transcript pp. 336, 314;
(Testimony of Riddle, Transcript pp. 234, 235).

(y) Proof that Stanton knew the identity of the assassin all along; (This is tied in to Quote 38);

(Testimony of Eisenschiml, Transcript pp. 335, 314;
(Testimony of Riddle, Transcript p. 234).

(z) When the Southern newspapers received the news of the tragedy; (This is tied in to Quote 28;

(Testimony of Eisenschiml, Transcript pp. 336, 314; 321;
(Testimony of Riddle, Transcript, p. 235).

(aa) The strange behavior of Gobright of the Associated Press; (This is tied in to Quotes 29 and 30;

(Testimony of Eisenschiml, Transcript pp. 336, 314;
(Testimony of Riddle, Transcript, p. 235).

(bb) The significance of the wire disturbance out of Washington during the crucial hours of the night, and Eckert's testimony in regard to it;

(This is tied in to Quote 31;
(Testimony of Eisenschiml, Transcript pp. 336, 315;
(Testimony of Riddle, Transcript pp. 235, 236).

(cc) How the pursuit of Booth was organized;

(This is tied in to Quote 32.

(Testimony of Riddle, Transcript p. 236;

(Testimony of Eisenschiml, Transcript p. 316).

(dd) The reasons for the premature arrest of Arnold and O'Laughlin;

(This is tied in to Quote 38).

(ee) The entire O'Beirne story, based on his private papers and his diary, inaccessible to anyone but Eisenschiml;

(This is tied in to Quote 35;

(Testimony of Riddle, Transcript 236;

(Testimony of Eisenschiml, Transcript p. 317).

(Admission by Millard—deposition p. 356).

805 (ff) (Withdrawn).

(gg) That the "tobacco barn" at Garrett's farm had more than one door;

(This is tied in to Quotes 50 and 51. Millard admitted that this was first brought to light or called to his attention by Eisenschiml. (Millard deposition pp. 467, 485)).

(hh) Lafayette C. Baker's determination to catch Booth, or substitute another body for it;

(This is tied in to Quote 53. Millard admitted that this was first brought to light or called to his attention by Eisenschiml. (Millard deposition, pp. 467, 489, 491)).

(ii) Lafayette Baker's interferences with the Dry Tortugas authorities to insure isolation and silence of the imprisoned "conspirators."

(This is tied in to Quote 55).

(26) The following is a summary of the deductions, inductions, conclusions and speculations presented for the first time in plaintiff's two said copyrighted books, all of which were copied by defendant.

(Testimony of Riddle, Transcript pp. 230 to 238, both incl.

(Testimony of Eisenschiml, Transcript, pp. 312 to 321, both incl.)

(a) That the conventional story of Lincoln's assassination is inaccurate, and that efforts were made to becloud it;

(This is implicit in Millard's entire article and all of plaintiff's Why.

(Riddle says this is so "without qualifications." (Transcript p. 1085). Eisenschiml testified: "That is really the contents of my book." (Transcript, pp. 1517, 1518).

806 (b) That the conspiracy was much more widespread than generally accepted, and pointed to Stanton.

(This is implicit in Millard's entire article and all of plaintiff's Why; It was testified to by Riddle (Transcript p. 1084) and Eisenschiml (Transcript p. 1468)

(Testimony of Riddle, Transcript p. 231;

(Testimony of Eisenschiml, Transcript pp. 231 and 331).

(c) That the Radicals and Stanton stood to gain much by Lincoln's death, and why;

(This is tied in to Why, p. 37 and True, pp. 105, Col. I, paragraph 5 from bottom. It was testified to by Eisenschiml (Transcript p. 1518).

(d) That Booth was being protected by some high personage, and why his road of escape was known and kept open.

(This is tied in to Why, p. 91, and True, p. 114, Col. II, top and p. 115, Col. II, bottom.

Testimony of Eisenschiml, Transcript pp. 314, 315).

(e) Why those who wanted to pursue Booth and knew where he had gone were prevented from following him, and why the organized pursuit was intentionally misdirected;

(This is tied in to Quotes 32 and 36 and the same passages as in (d) hereinabove. This was testified to by Eisenschiml (Transcript pp. 1535, 1536, 1541);

(Testimony of Riddle, Transcript p. 236).

(f) Why the wires out of Washington went out of commission during the night of April 14, 1865;

(This is tied in to Quote 31.

807 (This was testified by Eisenschiml (Transcript pp. 336, 315, 1542 to 1552, both incl.) and by Riddle (Transcript pp. 235-6, p. 1041).

(g) Why the news of the assassination was not allowed to reach Richmond and other Southern cities until it could be assumed that Booth had passed beyond them;

(This is tied in partly to Quote 28 (Why, pp. 65, 66, 67, 90, True, p. 115, Col. I, par. 4). This was admitted by Millard (deposition p. 378).

(Testimony of Eisenschiml, Transcript 336;

(Testimony of Riddle, Transcript p. 285).

(h) Why the correspondent of the Associated Press suppressed a telegram which had preceded the interrupted wire service;

(This is tied in to Why, p. 75 and True p. 115 center.

(Testimony of Eisenschiml, Transcript p. 336;

(Testimony of Riddle, Transcript p. 235).

(i) Why the record of the conspiracy trial was deliberately doctored up;

(This is tied in partly to Quote 23 (Why, page 115, bottom, and True page 114, Col. I, bottom) This was admitted by Millard (deposition p. 378, 63, 474).

(Testimony of Riddle, Transcript p. 236).

(j) Why the government was interested only in punishing those conspirators who were suspected of having been in Booth's confidence, while all others were ignored;

(This is tied in partly to Quote 49 (Why, page 304, and True, page 118, Col. I, paragraphs 4 and 5). This was admitted by Millard (depositions p. 378) and testified to by Riddle (Transcript p. 1077) Testimony of Eisenschiml, Transcript p. 320).

808 (k) Why Grant did not tell the truth when he gave his reason for leaving Washington on April 14, 1865;

(This is tied in partly to Quotes 4, 5 and 6.
(Why, p. 56, and True, p. 105, center;
(Testimony of Eisenschiml, Transcript pp. 335, 314;
(Testimony of Riddle, Transcript p. 234).

(l) The significance of Parker staying on the Police force until Stanton was removed from office, and why their dismissals occurred almost simultaneously;

(This is tied in partly to Quote 34A
(Why, p. 19, and True, p. 117, Col. I, center)
(This was admitted by Millard (deposition p. 378) and testified to by Riddle (Transcript p. 1079);
(Testimony of Riddle, Transcript p. 237;
(Testimony of Eisenschiml, Transcript p. 320).

(m) The implication in the premature arrest of Arnold and O'Laughlin, indicating that the identity of the conspirators was known, and that those who might have been in Booth's confidence had to be silenced quickly;

(This is tied in partly to Quote 38.
(Why, page 48, and True, page 117, Cols. I and II)).

(n) The significance of Stanton's refusal to let Eckert act as Lincoln's bodyguard that night;

(This is tied in partly to Quotes 9, 19, 11 and 12
(Why, pp. 37, 38, and True, pp. 106. Col. I bottom, Col. II top)).

(o) The interpretation of Booth's exclamation to Lloyd that they had murdered Lincoln and Seward, indicating that no other murders had been contemplated.

(This is tied in partly to Quote 33 (Why page 171, 809 and True, page 116, Col. I, par. 5 from bottom).

(27) (a) Why Was Lincoln Murdered? Plaintiff's Exhibit 1, is a book of more than 500 pages, written and copyrighted by the plaintiff, Otto Eisenschiml, and published by Little, Brown and Company in March 1937 (the year of copyright). Immediately under the copyright notice the following language is printed in capital letters throughout: "All rights reserved, including the right to reproduce this book or portions thereof in any form." At the end of the page, these words appear also in capital letters: "Printed in the United States of America."

(b) The book has twenty-nine chapters plus a foreword (under the title "Smudges"), a Conclusion, Supplemental Notes, Acknowledgments, an Index and many Illustrations, including Reproductions of Documents, at End of Book.

(c) On the following pages of the book as received in evidence, there are underscorings and markings in the pencilled handwriting of the plaintiff: 11 to 14, both incl., 16, 17, 19, 23, 24, 25, 26, 27, 29, 34, 35, 37, 38, 49, 56, 57, 58, 59, 65, 66, 68, 73, 75, 78, 79, 84, 85, 91, 110, 111, 112, 113, 114, 120, 122, 123, 171, 184, 230, 231, 447, 448. There are numerals in the same handwriting in the margins of the said pages; these refer by number to the items or quotations or quotes similarly numbered, in Exhibit "C" of the Plaintiff's Affidavit in Support of his Motion for Summary Judgment (Plaintiff's Exhibit 7); namely: Nos. 4 to 36, both incl. (including 34-A), 38, 39, 43 to 49, both incl., 54 to 57, both incl., 59 to 63, both incl., 65 and 66

(*fifty-four in all*). (The other items or quotations of Exhibit "C"—namely, 1, 2, 3, 37, 40, 41, 42, 50, 51, 52,
810 53, 58 and 64—thirteen in all—pertain to In the Shadow of Lincoln's Death, Plaintiff's Exhibit 2.) The passages in question are keyed to passages on pages 37, 104, 105, 106, 108, 109, 110, 112, 114, 115, 116, 117, 118, 119 and 120 of the Millard article (Plaintiff's Exhibit 3).

(d) The parallel passages, thus numbered, are among those claimed by the plaintiff to be copied by defendant from plaintiff's said copyrighted books. Those are not the only claimed infringements. First of all, there is the over-all plagiarism, described in Plaintiff's Exhibit 20 and in the testimony of the plaintiff and summarized hereinafter. Then there are the instances of copying testified to by the expert witness, Dr. Donald W. Riddle. (The Riddle testimony and exhibits are more fully analyzed hereinafter.) Then there are the examples of plagiarism enumerated in paragraphs 18, 19 and 20 and Exhibit "C" of the Plaintiff's Affidavit in Support of his Motion for Summary Judgment (Plaintiff's Exhibit 7). These are set forth, in part, as findings 25 and 26 hereinabove.

(e) Among the more important claimed instances of copying by the defendant are seven entire chapters; namely, Chapter 111 ("The Strange Career of John F. Parker," pages 11 to 21, both incl.), Chapter IV ("What Really Happened at Ford's Theatre", pages 22 to 31, both inclusive), Chapter V ("The President Is Refused Protection," pp. 32 to 39, both incl.), Chapter VII ("Grant Suddenly Leaves Washington," pages 54 to 64, both incl.), Chapter VIII ("How News of the Tragedy Was Handled," pages 65 to 90, both incl.), Chapter IX ("John Fletcher Tells His Story," pages 107 to 115, both incl.), and Chapter XII ("Baker Directs the Pursuit," page 116 to 129, both incl.).

811 (f) Some of the illustrations which are the basis of claimed infringements by the defendant are on pages 15, 60, 82, 84, 86, 92, 112, 113, and elsewhere, including Nos. 3 and 4 and 12 of the Documents at the End of the Book.

(g) The various claimed infringements are summarized and analyzed hereinafter.

(h) At the bottom of the various pages of the book, there are foot-note references to the original sources for some of the statements made by the author in his book, such as manuscripts in public and private depositories, newspapers, periodicals, pamphlets, reports, books, etc., etc., some rare and difficult to get and scattered in various places throughout the country. Some of the foot-notes indicate that the originals are in the possession of Eisenschiml. These include pages 14 and 15 (the O'Beirne papers), 84 (various newspapers), 120, 123, 128, etc., etc. Some of the foot-notes include acknowledgments to the copyright owners of the books used or those holding possession of the documents consulted, as for examples, pages 23, 39, 71, 87, etc. Some of the footnotes indicate when the italics are Eisenschiml's, as for example, page 114.

(i) In some instances, as for example, the Camden & Amboy Railroad time-table—page 56, the fact that Eisenschiml has exclusive knowledge of the facts or possession of the material, is not indicated.

(j) In the Acknowledgments (on page 487-8, both incl.) Eisenschiml says: "In the preparation of this book I have received help from many people to whom I am greatly indebted." He then lists a number of such persons, including Paul M. Angle, Lloyd Lewis, David Rankin Barbee, F. Lauriston Bullard, Clara E. Laughlin, Luther H. Baker. Among the acknowledgments is one
812 which reads: "To the late John H. Dern, Secretary

of War, who permitted the publication of material found in the files of his department." Another one reads: "To Miss Virginia Maier, who has devoted her entire time for years to historical research, and who has been a vital factor in the completion of the volume." (Miss Maier is now Mrs. Goldberg, the first witness called by the plaintiff).

(28) (a) In the Shadow of Lincoln's Death, Plaintiff's Exhibit 2, is a book of more than 415 pages, written by the plaintiff, Otto Eisenschiml, and published and copyrighted originally by Wilfred Funk, Inc., in 1940. Subsequently, the copyright was assigned to the plaintiff (Plaintiff's Exhibit 22). On the same page as the usual copyright notice appears these words: "Printed in the United States of America." On the last page of the book appears these words: "Printed by the Cornwall Press, Inc. Cornwall, N. Y. Bound by J. F. Tayley Company, Long Island, N. Y."

(b) The book has fourteen chapters, acknowledgments, Notes (at the rear of the book, pages 371 to 404, both incl.) and illustrations.

(c) On the following pages of the book as received in evidence there are underscorings and markings in the pencilled handwriting of the plaintiff: 5, 8, 9, 25, 26, 55, 70, 71, 73, 74, 91, 351. There are numerals in the same handwriting in the margins of the said pages; these refer by number to the items or quotations or quotes, similarly numbered, in Exhibit "C" of the Plaintiff's Affidavit in Support of his Motion for Summary Judgment (Plaintiff's Exhibit 7); namely, Nos. 1, 2, 3, 37, 40, 41, 42, 50, 51, 52, 53, 58 and 64—thirteen in all. (The other fifty-four underscored passages are in Why Was Lincoln Murdered?, Plaintiff's Exhibit 1). The passages in question are 813 keyed to passages on pages 36, 37, 119, 116, 105, 107, 118, 119, 106 and 111 of the Millard article (Plaintiff's Exhibit 3).

(d) The parallel passages, thus numbered, are among those claimed by the plaintiff to be copied by defendant from plaintiff's said copyrighted book. Those are not the only claimed infringements. (See the references thereto in the note in connection with Plaintiff's Exhibit 1—finding 27 (d) hereinabove).

(e) Among the more important claimed instances of copying by the defendant are: Chapter I ("Lincoln Had Some Narrow Escapes," page 3-21, both incl.), Chapter II ("Vox Populi,", pages 25-30, both incl.), portions of Chapter IV ("Did John Wilkes Booth Escape?", pages 53-88, both incl.), Part I of Chapter XIV ("Problems Solved and Unsolved—When Was Lincoln Shot?"—pages 351 to 353, both incl.).

(f) The various claimed infringements are summarized and analyzed elsewhere.

(g) In the text of the various pages of the book, there are reference numbers in small type to the various sources for some of the statements made by the author in his book. By turning to the appropriate place in the Notes in the back of the book, one can determine the original sources consulted by the author.

(h) In the Acknowledgments (on pages XI and XII of his book) the author lists a large number of people and institutions to whom he is indebted, including some of those referred to in the testimony of Virginia Goldberg, formerly Virginia Maier. He makes acknowledgment to her "for her untiring cooperation in collecting, assembling and evaluating the historical data used in this volume."

814 (29) Why Was Lincoln Murdered? is essentially different from all previous accounts of Lincoln's assassination. The earlier books were conventional accounts largely in narrative form. They dealt with no

mysteries, asked no questions, had no surmises or inferences, and were based on familiar factual material. Eisenschiml's book reopens the supposedly closed chapter of Lincoln's death by disclosing many new facts, discovered by Eisenschiml, and, what is equally important, it dovetails them with known facts into a new and consistent pattern, which forms the main implied thesis—that the crime was not, as heretofore assumed, the deed of a halferazed actor acting on his own behalf, but the result of a conspiracy, in which high Washington officials were involved, possibly Secretary of War Stanton included. The book also points out many other heretofore overlooked mysteries, some of which remain unexplained. Prior to the publication of Eisenschiml's book, no suspicion on these various matters had been voiced by any historical writer. The main thesis was then supplemented by Eisenschiml's second book, In the Shadow of Lincoln's Death. In both books, unlike the earlier Lincoln assassination books, questions are asked, inferences, surmises and conclusions reached. The Eisenschiml books, while based upon sound scholarship and factual, are also full of mystery, suspense, and excitement (Plaintiff's Exhibits 1, 2, and 20, Exhibits A and B attached to Plaintiff's Exhibit 7, Eisenschiml testimony Riddle testimony).

(30) Eisenschiml's book, Why Was Lincoln Murdered? begins with a one-page foreword, under the title, Smudges, which sets the tone of the entire book—and Millard's article. He tells of the dark smudge found by a chemist on a photographic plate. The chemist's inquisitive pursuit of an explanation led to the discovery of radium. Eisenschiml goes on to say:

815 "Historians, in developing the story of Lincoln's assassination, have encountered smudges equally baffling. Why did General Grant suddenly alter his

plans and decide not to go to Ford's Theater on the evening of Lincoln's assassination? Who, during that same night, tampered with the telegraph wires leading out of Washington? Why was the President's bodyguard at the playhouse, guilty of the grossest negligence, not punished nor even questioned?

"Perhaps the most serious reproach against historical writers is not that they have left such questions unanswered, but that they have failed to ask them."

(b) It is to be noted that these questions, asked for the first time by Eisenschiml and developed in his book, are likewise asked by Millard in his article and developed in the self same way that Eisenschiml develops them. (Quotes 1 to 16, both incl., 31, 34, 34A. This is the heart of the Eisenschiml book and the Millard article.

(c) What immediately follows under paragraphs numbered 31 to 42 are summaries of chapters from Why Was Lincoln Murdered? and a general indication of the overall copying of each chapter by Millard. For a detailed step-by-step demonstration of the over-all copying, one should read the Quotes referred to in each instance, the material indicated in Millard's deposition, and then the other references listed at the head of each chapter summary.

(31) (a) Chapter III. The Strange Career of John F. Parker. (Pages 11-21, both inclusive, of Plaintiff's Exhibit 1, pages 108, 109, 117 of Millard's article—Plaintiff's Exhibit 3, Plaintiff's Exhibit 20, pp. 2-3; Quotes 13, 14, 15, 21, 34, 34A, Eisenschiml testimony—transcript; Millard deposition, pages 235, 236, 239).

816 (b) The chapter recites the career of an incompetent and dissolute policeman named John F. Parker, who was Lincoln's bodyguard on the fatal night, and how

he happened to be appointed through a letter written by Mrs. Lincoln to a provost marshal named O'Beirne. It takes the story from his birth on May 19, 1830, through his career as carpenter, his enlistment in the Army, his joining the Metropolitan Police Force, his family, his bad record on the Police Force, his appearances before the Police Board, the details of his various misadventures, the Mrs. Lincoln letter and her endorsement with respect to Parker's draft exemption, the drink with the coachman Burns, what Parker did on the night of the assassination and the morning after, his subsequent police career and misadventures, the minor nature of his last offense and its leading to his dismissal; Secretary of War Stanton meanwhile having been ousted.

(c) Millard, at the pages and in the places indicated, follows the Parker story as given by Eisenschiml in the latter's copyrighted narrative form. He has the same facts, the same inferences and questions, and generally a close paraphrase and near-identity of language. Although his sequence of incidents is sometimes a bit different from Eisenschiml's, his build-up of the story closely parallels Eisenschiml's. All of this lends color, interest and excitement to the Millard story.

(32) (a) Chapter IV. What Really Happened at Ford's Theater. (Pages 22-31, both incl., of Plaintiff's Exhibit 1, pages 109, 110 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, pp. 3-4; Quotes 16, 17, 18, 19, 20, 22; Eisenschiml's testimony, transcript; Millard deposition, pages 63, 473, 474).

817 (b) The chapter shows that the accepted version of what happened in the President's box at Ford's Theater, prior to the assassination, was wrong. Eisenschiml shows that five, and not four, persons were in the box; the fifth person being Lincoln's valet Charles Forbes.

He proves this through a theretofore unpublished statement by Forbes and an unknown account by a journalist named Hanscom, the latter account being substantiated by Eisenschiml through statements of witnesses, including Lieutenant Crawford and Captain McGowan. Eisenschiml then points out the variations and contradictions of two different statements made by three witnesses—Miss Harris, Major Rathbone and Capt. McGowan. Some of the statements had been unknown; others had not been properly evaluated. Eisenschiml's evaluation leads him to the suspicion that these witnesses had been influenced by the War Department to omit certain portions of their original statements. He makes observations and inferences with respect thereto.

(c) Millard appropriates the Forbes statement verbatim and copies from the statements of Miss Harris and Major Rathbone in the manner of Eisenschiml and uses Eisenschiml's surmises and inferences as to the statements of the said four persons.

(33) (a) Chapter V. The President is Refused Protection. (Pages 32-39, both incl., of Plaintiff's Exhibit 1, pages 36 and 106 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, pp. 4-5; Quotes 9, 10, 11, 12, Eisenschiml testimony—transcript; Millard deposition).

818 (b) Here Eisenschiml investigates Stanton's refusal to allow Major Eckert to accompany Lincoln to the theatre, and uncovers the falsity of the statements by Stanton and Eckert as to what they intended to do that night. He further points out Stanton's perjury about the time of Lincoln's last visit to the War Department and asks questions and makes inferences and conclusions with respect thereto. He shows how little was actually done at the War Department that night, digs out the only three wires that were received, and tells of what Stanton and Eckert actually did.

(c) Millard follows Eisenschiml's story as here outlined, adopting Eisenschiml's incidents, manner of proof, inferences, conclusions, and much of his language. He adopts Eisenschiml's implication of Stanton's complicity by printing a picture of Stanton with the caption: "Why did he refuse Lincoln the guard he asked for?" All of this heightens the interest, the suspense of Millard's story, in the same fashion as employed by Eisenschiml.

(34) (a) Chapter VI. Premonitions vs. Secret Service Reports. (Pages 40-53, both incl., of Plaintiff's Exhibit 1, page 117 and other spots in Millard's article—Plaintiff's Exhibit 3, Plaintiff's Exhibit 20, p. 5, Quote 38, Eisenschiml testimony—transcript; Millard deposition, Riddle testimony.

(b) Eisenschiml deals with the premonition of approaching tragedy, Lincoln's forebodings and superstitions, his dreams, the recollection of Crook, the threatening letters, the plots, the rumors, the attempted kidnapping, etc., all in the manner later used by Millard to lend color to his article; all leading to the climactic point, 819 borrowed by Millard, that the War Department had known the identity of the conspirators for several weeks prior to the assassination, but had taken no action against them, had not even kept them under surveillance. Eisenschiml's proof is a letter by Robert G. Mowry, which he discovered and which shows that the "Sam letter", generally accepted as the means which identified Sam Arnold, one of the conspirators, and led to his premature arrest, did not in fact have that effect. Eisenschiml shows that the assumption is wrong. Millard repeats all this, following Eisenschiml in his discoveries and inferences.

(35) (a) Chapter VII. Grant Suddenly Leaves Washington. (Pages 54-64, both incl., of Plaintiff's Exhibit 1, page 105 of Millard's article—Plaintiff's Exhibit 3,

Plaintiff's Exhibit 20, pp. 5-6, Quotes 4, 5, 6, 7; Eisenschiml testimony—transcript; Millard deposition, pp. 468, 437, 438, 35, 318).

(b) This chapter tells of the Lincolns inviting the Grants to join them at Ford's Theatre, the General's acceptance, followed by his abrupt departure from Washington. Eisenschiml shows that Grant's own version of why he stood up Lincoln that night was a fabrication, because, according to a time-table unearthed by Eisenschiml after nine months of investigation, he could have reached his children by an early morning train almost as quickly as by the night train he took. Eisenschiml also questions his anxiety to see his children, from some of whom he had not been away very long. He points out that had Grant been present in the box, Booth's plot could not have been carried out. He tells of how Mrs. Grant, a woman of education and refinement, had been subjected to humiliation by Mr. Lincoln, and speculates that this was the reason for Grant to run out on the engagement.

820 (c) Millard copies everything in this chapter, including the train schedules and the various suspicions and surmises.

(36) (a) Chapter VIII. How the News of the Tragedy Was Handled. (Pages 65-90, both incl., of Plaintiff's Exhibit 1; pages 114, 115 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, pp. 6-7; Quotes 28, 29, 31; Plaintiff's Exhibit 31, Eisenschiml testimony pp. 1242-43-44; Millard deposition, pp. 482-84, 323, 321).

(b) Eisenschiml shows for the first time that the news of the tragedy and the name of the assassin were wilfully withheld from the press until the time for the first morning edition had passed; and that wherever this was impossible, the papers were kept from printing the truth. He tells of the strange behavior of L. A. Gobright, the

Washington agent of the Associated Press. He tells of the police blotter and the seventeen persons who appeared at headquarters and identified Booth as the murderer. He shows how the interruption of the wire service at the critical hours was an inside job, and wonders why no efforts were made to investigate it. He shows, by example and induction, that the Southern papers were very tardily advised of the news, or were not allowed to print it at once. The implication of these facts, he demonstrates, is that Booth was to be given time to get safely beyond reach of successful pursuit. (c) Millard parallels this chapter with all of its inferences. He cites only the Southern papers which Eisenschiml cites, although, admittedly, he had seen none of the papers himself.

(37) (a) Chapter IX. Every Avenue of Escape Blocked —Save One. (Pages 91-96, both incl., of Plaintiff's Exhibit 1, pages 115, 116 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, p. 7, Quote 32, Eisenschiml testimony, transcript; Millard's deposition, pp. 477-480).

821 (b) Here Eisenschiml shows, in detail and analytically, that the War Department sent troops out to patrol every road out of Washington, except the one which Booth was most likely to take, and did take. Millard takes the essence of this chapter, but not all of the details.

(38) (a) Chapter X. The Man Hunt Is On.

Chapter XI. John Fletcher Tells His Story. These two chapters belong together, as they deal with the detail of the search for Booth and his men.

(Pages 97-106, both incl. and 107-115, both incl. of Plaintiff's Exhibit 1, pages 114 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, pp. 7-8; Quotes 23, 24, 25, 26 and 27, Eisenschiml's testimony, transcript; Millard's deposition, pages 65, 72, 481).

(b) These chapters tell of the adventures of a simple stableman named John Fletcher. He had let Booth's companion, Harold, have a horse and, then growing suspicious, had followed him. He arrived at the bridge and was stopped. Booth and Harold had been permitted to cross just a few minutes earlier. Eisenschiml shows, through analysis of the records and facsimiles of documents, the strange manner in which the report of Fletcher was ignored. In the same way, he shows how sound plans for the pursuit of Booth were frustrated by the War Department, and how the official transcript of Fletcher's testimony, sanctioned by the War Department, was deliberately mutilated in order to suppress the tell-tale parts of Fletcher's testimony. Eisenschiml speculates about all these strange goings-on.

(c) Millard tells the same story in the way Eisenschiml tells it, with the same suspicions, inferences and surmises.

822 (39) (a) Chapter XII. Baker Directs the Pursuit.

(Pages 116-129, both incl., of Plaintiff's Exhibit 1, pages 117, 118 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, p. 8, Quotes 35, 48; Eisenschiml testimony, transcript pp. 1683-1686; Millard deposition, pp. 90, 356, 110).

(b) This chapter tells of O'Beirne's pursuit of Booth, of how he almost caught Booth, but was called back by Stanton at the critical moment. As with the other chapters, it is not simply a narrative, but is replete with surmises and analyses; and it utilizes a diary from the O'Beirne papers, which was in Eisenschiml's exclusive possession.

(c) Millard tells the same story, with the same analysis, the same inferences, and, in part, with similar language, as when he copies from the Cox diary.

(40) (a) Chapter XIV. Death Visits Garrett's Farm.

Chapter XV. The Plots Against Grant, Stanton and Johnson.

Again, two chapters are to be considered together, because in Eisenschiml's book they hang together.

(Pages 153-161, both incl., and 162-174, both incl., of Plaintiff's Exhibit 1; pages 112, 116, 118, 119 of Millard's article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, pp. 8-9, Quote 33, Eisenschiml's testimony, transcript; Millard deposition, pp. 86, 87, 88).

(b) These chapters carry to the final cornering of Booth, and then deal with the alleged plots against other high government officials. They also show that Booth deliberately left behind clues to show where he intended to go, and Eisenschiml (a phrase paralleled by Millard in the deleted part of his manuscript) interpreted this as a game of a fox with the hounds. The chapter also shows that the alleged attempts against the other government officials, with the exception of Seward, were faked.
823 Millard follows Eisenschiml's story, conclusions and all.

(41) (a) Chapter XVI. Stanton Invents a Novel Torture.

(Pages 175-186, both incl., of Plaintiff's Exhibit 1, page 119 of Millard's article, Plaintiff's Exhibit 20, p. 9; Eisenschiml testimony, transcript, Millard deposition p. 122).

(b) The one important element of this chapter which Millard took from Eisenschiml is that a promise of clemency was held out to Mrs. Surratt, the only woman prisoner, to keep her from talking. (See also Shadow pp. 128, 130).

(42) Rest of Book. (a) For the rest, Eisenschiml develops what is already implicit in the early chapters. He analyzes the cases against Jefferson Davis, the Radicals, John Wilkes Booth, Andrew Johnson and Stanton, and deals with the military aspects of his subject (Victory Not Wanted) and much unwritten history. His method

continues to the end to be one of taking new or little known facts, fitting them into the pattern of mystery, asking questions, analyzing, making surmises, reaching conclusions.

(b) His last sentence, in harmony with the rest of the book, is: "Pending future developments, the story of Lincoln's assassination remains, in many of its phases, an unsolved mystery."

(43) What immediately follows are summaries of two portions of In the Shadow of Lincoln's Death and the general indication of the overall copying thereof by Millard.

(44) (a) Chapter II. Vox Populi.

(Pages 25-30 of Plaintiff's Exhibit 2; Pages 36, 37 of Millard article—Plaintiff's Exhibit 3; Plaintiff's Exhibit 20, p. 3, Quotes 1, 2, 3, Eisenschiml testimony, transcript; Millard's deposition).

824 (b) This chapter deals with the premature rumors of the death of Lincoln—reports in Manchester, New Hampshire, St. Joseph, Minnesota, the Middleton Whig Press, the Newburgh Journal.

(c) Millard uses the same premature and colorful rumors and reports of Lincoln's death at virtually the beginning of his article. He uses the ones digested and commented upon by Eisenschiml, and no others.

(45) (a) Chapter XIV. Problems Solved and Unsolved.

1. When Was Lincoln Shot?

(Pages 351-353 of Plaintiff's Exhibits 2, Pages of Millard article—Plaintiff's Exhibit Exhibit 3; Quote 64; Millard deposition; Eisenschiml testimony, transcript pp. Riddle testimony, transcript).

(b) Eisenschiml tells that it is known to a second when Lincoln died, and he sums up the material on this point;

then he goes on to say that no one has recorded the exact time when Lincoln was shot. He points out the disparity in the time of shooting as given in the press and by witnesses and others. Then he establishes by a process of reasoning the time as "at or close to 13 minutes past 10 p. m."

(c) The results of Eisenschiml's analysis are appropriated by Millard.

(46) The following is a synopsis, or summary, of the Millard article (with the tie-in to Eisenschiml's books indicated parenthetically):

(a) In the 87 years since Lincoln's assassination millions of words have been written about the case, but the more we know about it, the less we know about it. (Why, p. 438, last two paragraphs).

(b) Lincoln once dreamt that he saw himself dead in the White House, and the dream bothered him. (Why, p. 40, Line 6).

825 (c) While despite the dismal weather Washington was celebrating the end of the war, premature reports of Lincoln's death were circulated in St. Joseph, Minnesota, Manchester, New Hampshire, and a printed report to that effect appeared in the afternoon edition of the Middletown, New York, Whig Press. (Shadow, pp. 25, 26, 27).

(d) Lincoln and his wife, together with General and Mrs. Grant, were expected at Ford's theater that night, (Why, p. 54, first sentence) and the management of the playhouse made appropriate arrangements, among others by putting ads into the afternoon papers, in which the Grants were featured. (Why, p. 60)

(e) At 11 AM a Cabinet meeting was held, attended by Grant, Stanton arrived late, and at his entrance Lincoln froze (Why, p. 4), and as he scanned the faces around him, he saw masked hatred in some of them. Fact was that if he lived through the next four years, he would shatter their scheme of raping the conquered South. (Why, pp. 371, 419).

(f) During the meeting, Grant received a mysterious note and bluntly cancelled his engagement for the evening, greatly disturbing Lincoln. (Why, p. 61, lines 10, 16, 17). In his memoirs Grant skillfully slid over the incident and gave as his excuse his anxiety to see his children at Burlington, New Jersey. But he had not been anxious before, and the time-table showed that he would have been almost as well off, if he had gone to the theater and taken an early morning train. (Why, p. 56). Apologists blame his sensitive wife for this breach of etiquette, because she was afraid to be publicly humiliated by the jealous Mrs. Lincoln. (Why, pp. 58, 59).

826 (g) In the afternoon Lincoln took a ride with his wife alone, and on his return he talked to the guard Crook about his possible assassination. (Why, p. 44 top). He then went to the War Department and asked Stanton to loan him Major Eckert, who could break a poker over his arm. Stanton flatly refused, saying there was vitally important work to be done that night in the War Department. (Why, p. 52).

(h) In walking back to the White House, Lincoln confided to Crook that he did not want to go to the theater, but could not disappoint the people. He then bid Crook "Goodbye", instead of his usual "Good night." (Why, p. 40, line 10).

(i) Fact was that Stanton went home that evening, and so did Eckert, did not return to the War Department, (Why, pp. 37, 38), and that only three messages addressed to either of the two was recorded that night. (Why, p. 35 center).

(j) The testimony regarding the development of the assassination plot is contradictory. Booth was a spectacular, but not a very good actor, but very handsome; and very fond of liquor, for which he had an enormous capacity.

(k) Booth fancied himself a true Southerner and hated Lincoln. Originally he had attempted to kidnap the President, (Why, p. 44), which could not have been considered a crime. (Shadow, p. 17 top). For this enterprise he got as confederates Arnold, O'Laughlin, Herold, Surratt, Atzerodt and Paine, the latter to subdue the still powerful Lincoln. (Shadow, p. 9 bottom).

(l) Mrs. Surratt ran a boarding-house, (Shadow, p. 91), which Booth frequented (Shadow, p. 101). In the meantime he ran short of money, took short engagements (Why, p. 373), and plunged $6000 into the oil boom.

827 (m) Booth's kidnapping scheme was not approved by his band, and he turned to murder instead. (Why, pp. 50, 51). At 11 AM on the day of the assassination Booth heard of Lincoln's appearance. He then wrote some letters, killing time until evening.

(n) Lincoln's safety lay in the hands of John F. Parker, whose record is laid bare in detail, including the letter which Mrs. Lincoln wrote to Provost Marshal O'Beirne, and which got him the appointment. (Why, Chapter III).

(o) The number of persons in the President's box numbered five, not four as all accounts of that time claim, the fifth being Charles Forbes, Lincoln's valet (Why, p. 23, top half). During the performance S. P. Hanscom, a Washington newspaperman, entered the box and delivered to Forbes a letter for Lincoln. (Why, pp. 23 bottom, 24, 25).

(p) That letter was never found. (Why, p. 29, Lines 13, 14). Two officers, Lt. Crawford and Captain McGowan, witnessed this episode and reported it to Stanton. (Why, p. 25 top). At the Conspiracy trial McGowan was a witness, but made no mention of the letter (Why, p. 27 center).

(q) Sometime during the performance Forbes, Parker and Lincoln's coachman Burns went out together for a drink. (Why, p. 26 bottom).

(r) A few minutes after 10 PM Booth entered Ford's theatre and climbed up to the dress circle. He had previously bored a hole into the door of the Presidential box.

(s) The two guests who had taken the Grants' place, Major Rathbone and Miss Harris, later gave contradictory eye-witness testimony as to what had happened. Miss Harris originally had mentioned an intruder, whom Rathbone had interrogated, but he did not mention it, and
828 Miss Harris omitted it in her later statement (Why, pp. 25, 26).

(t) After the murder, Dr. Leale took care of the dying Lincoln, while the audience went into an uproar. Lincoln was taken across the street to the Peterson home, where Stanton temporarily visualized himself Chief Executive (Why, p. 69, line 12), and treated Mrs. Lincoln brutally (Why, p. 419 center). Lincoln died at 7:21 A.M. The time of the shot is usually accepted as 10:13 P.M. (Shadow, pp. 351, 353).

(u) In the meantime Paine had attacked Seward, leaving shambles behind him. (Why, pp. 6, 7, 170).

(v) Atzerodt's movements that day betrayed superlative stupidity. He made himself conspicuous at the hotel where Andrew Johnson lived. He then fled. (Why, pp. 167, 168).

(w) In his room the police found a heterogenous assortment of weapons and other articles. (Why, p. 168).

(x) Booth's plan was upset by a flag which Harry Ford had hung in front of Lincoln's box, and which caused Booth to fall and break a bone in his leg. Fleeing from the theatre, he was allowed by a Sergeant Cobb to cross the bridge over the Potomac, who also allowed Herold to pass. (Why, p. 107). He later was not able to identify Herold convincingly, but Herold's lawyer failed to take advantage of this opening. (Why, p. 253).

(y) A third horseman, John Fletcher, followed Booth and Herold, and was told that he could cross, but not return. Fletcher preferred not to cross. (Why, p. 107). His testimony at the trial was mutilated by the official reporter,
Benn Pitman, as shown by a comparison with the orig-
829 inal transcript. (Why, pp. 112, 113). According to the
original testimony, his statements should have been sufficient to concentrate the pursuit of the fugitives along the route reported by him, but this was not done. (Why, p. 116 top).

(z) A Captain Gleason, who knew where to find Booth, was refused the cavalry troops he requested at General Augur's headquarters (Why, p. 132 after break)

(aa) Fletcher was no mean liar himself, as shown by his contradictions in regard to time. While he testified that he had been at the bridge at 11:50 P.M., the police blotter showed that he was at the police station between 11:00 P.M. and midnight. (Why, p. 110 bottom).

(bb) In the meantime, Stanton had summoned to his headquarters his friend Justice Cartter to sift evidence and organize the chase (Why, p. 69), but, although he knew the assassin's name and had his full description, he did not even send out the news of the tragedy for almost 4 hours (Why, p. 65), and waited another hour, until the newspapers were well into their press runs, before announcing Booth's name. (Why, p. 67, second par.) The southern papers did not get the news until several days later, and it was twelve days before Macon, Georgia had the news. (Why, p. 84).

(cc) L. A. Gobright of the Associated Press sent out a quick wire that Lincoln had been shot, but followed it with a second wire to disregard the news. (Why, pp. 73, 75).

(dd) Then every commercial telegraph line out of Washington went dead for nearly two hours. This mys-

tery was never investigated, and Eckert testified later that it had not deemed sufficiently important. (Why, pp. 78, 79).

830 (ee) The first orders for the pursuit of troops went to Colonel Thompson at Darnestown, apparently on the peculiar theory that a murderer would seek refuge in enemy country. (Why, pp. 91, 133).

(ff) Booth and Herold were passing through Surrattsville, and Booth was supposed to have shouted to Lloyd, the lessee of Mrs. Surratt's farm, "I am pretty certain that we have assassinated the President and Seward." By not mentioning any other Cabinet member, he implied that no plot against any other existed. (Why, p. 171).

(gg) Booth next stopped at Dr. Mudd's house to have his leg fixed, and Herold explained to the doctor that they were riding south, but only to reach the Potomac in the hope of finding a boat headed north. (Why, p. 258).

(hh) Dr. Mudd helped Booth, and was arrested. Lafayette Baker came from New York to take charge of the pursuit. (Why, p. 118).

(ii) John Parker, the man who could have prevented the crime, had vanished after the assassination, but at 6:00 o'clock in the morning he stumbled into the police station with a prostitute he had picked up, and who was promptly discharged. (Why, p. 17 center).

(jj) Parker remained on the police force uncensored and untried, but in 1868 he was dismissed for the minor offense of having fallen asleep on his beat. He said one consolation: Secretary Stanton, too, had just been fired. (Why, p. 19).

(kk) Meanwhile Booth and Herold had reached the home of Samuel Cox, who hid them and had his brother-in-law Jones take care of them. Neither of them were 831 ever called as witnesses or punished. (Why, p. 297, 301 bottom).

(ll) Arnold and O'Laughlin had been arrested, but so swiftly that the War Department unwittingly betrayed itself. (Why, p. 49).

(mm) Major O'Beirne had picked up a false clue (Why, p. 123); but in following it, came close to capture the fugitives, as shown by an entry in his diary that Cox had been cooking provisions and carrying it to persons in the swamp. (Why, p. 120).

(nn) The next night Booth and Herold left Cox's farm and crossed into Virginia. They met 3 Confederate horsemen, who took them to Garrett's farm. (Why, p. 302, line 9). These 3 soldiers also escaped punishment, due to the War Department's "selective vengeance." (Why, p. 303, lines 4-8).

(oo) O'Beirne had again found the right trail, but his men were exhausted, and he told everything he had found out so far to Grant's chief telegrapher, who had opened a telegraph station at Port Tobacco, and gave Washington O'Beirne's information. Back came an order to O'Beirne from Stanton to remain on the Maryland side of the Potomac. (Why, pp. 122, 123).

(pp) Lafayette Baker now sent a force of 25 men, commanded by Lt. Colonel Conger and Lafayette's cousin Luther Baker, to close in on the fugitives. They cornered Booth and Herold in a barn at Garrett's farm. (Why, p. 461). Herold surrendered and Booth was shot. (Shadow, pp. 31, 33). When he was called by his name, he seemed surprised. (Shadow, p. 55, last line). Herold denied that he knew his companion. Lafayette Baker had confided to a friend that "I intended to have his body,—or a mighty good substitute for it." (Shadow, p. 73, last line). 832 The body of Booth was secretly disposed of.

(qq) Trial was prepared for eight prisoners, all chained and hooded. Only Mrs. Surratt was left un-

hooded. (Why, p. 179 center), but she was even more exquisitely tortured by having the hope of reprieve dangled before her. (Why, p. 179; Shadow pp. 128, 130).

(rr) Edward Bates and Orville Browning expressed harshly critical comments on the trial (Why, p. 230), but all prisoners were convicted. Four were hanged, the others were sent to the Dry Tortugas, where, due to a scare-telegram from Lafayette Baker, th were put into solitary confinement and not allowed to speak to anyone. (Why, p. 181).

(ss) Surratt had escaped to Europe, but was recognized time and again. (Shadow, Chapter XI). Nevertheless, the State department, after consulation with the War Department, wired to the U. S. Consul at Liverpool that no action should be taken. (Why, p. 200.) When this did not suffice, the reward for Surratt's seizure was withdrawn. (Why, p. 202).

(tt) Surratt eventually was brought back to America, (Shadow, Chapter XI) and the Government gave blunt order to "hunt up or . . . manufacture evidence" against him. (Why, p. 206).

(uu) Soon afterward Stanton was dismissed (Why, p. 431).

(vv) Mrs. Lincoln went mad, and so did Major Rathbone, who murdered his wife, the former Miss Harris. (Shadow, p. 396).

(ww) Mr. Mudd and the other surviving prisoners at Dry Tortugas were released by President Johnson. (Why, Appendix No. 12-photostat).

833 (47) Millard's article, in almost every respect, follows the outline of Eisenschiml's said two books.

(48) The characters other than Stanton have relatively minor roles in both the Millard article and the Eisenschiml book. Atzerodt does not appear in Millard's

article until page 107, where he is simply introduced in seven lines in column I, after break. He gets three more lines in column I near the bottom, a few more on page 111, column II (before and after the break) and on page 112, column I, after the break, and top of column II. His death is announced on page 120 in one line (column I, paragraph 3 after break). At no time does he play an important part. The occupants of the box, Major Rathbone and Miss Harris, get still less attention. Miss Harris is mentioned only on page 110, column I, after the break, and Major Rathbone on the same page, column I, bottom, and column II top. He is then mentioned again as bawling at the mob while he removed the bar (column II, paragraph 4 after break), and on page 120, column II, as murdering his wife, the former Miss Harris. (Column II, page 9, after break). Even Lincoln and Booth receive a much less important treatment from Millard than Stanton, and are merely sketched in as background. As to Lincoln. On page 36 of the Millard article, he tells of his dreams. On page 37 he invites Grant to the theater. On page 105 he holds a Cabinet meeting, receives Grant's refusal, and takes Mrs. Lincoln for a ride. On page 106 he tells Crook of his premonitions. After that he is not mentioned any more. As to Booth, he receives more space, but very little of what he does contributes to the mysteries of the story. On page 104, column II, last paragraph, it is told that he cut a hole in the door of the Presidential box. On page 106, column II, and page 834 107, columns I and II his background and kidnapping plot are described, and how he turned to murder. Page 108, column I contains references to his activities prior to the murder. There is nothing mysterious, colorful or exciting in all this. It is just schoolbook history. On page 109, column II, bottom and column II the deed

comes closer, and finally he consummates it. All that again is schoolbook history too. The same comment applies to page 112, column II, which describes how Booth injured his leg, and page 113, column I, alluding to the bridge episode, and page 115, column II, bottom, and page 116, Booth's flight. Minor references to the flight appear on page 117, column I, center, and column II, bottom, which is finished on page 118, top. The wind-up of the pursuit comes on page 118, and page 119.

(49) (a) Stanton overshadows by far all other people in Millard's cast, as in Eisenschiml's. Stanton's sinister part is importantly treated throughout Millard's article, and Stanton's name and the part he played are constantly kept before the reader's eyes, as in Eisenschiml's books.

(b) On page 36 appears Stanton's photo in large size. It is the only photo in the entire article. The caption underneath arouses the reader's suspicion of Stanton's complicity in Lincoln's death: "Why did he (Stanton) refuse Lincoln the guard he asked for?"

(c) On page 105, column I, after the break. Stanton is introduced to the reader as the prime suspect, but he first is shown in a bad light.

> "Only Stanton, the Secretary of War, with his curled beard that he doused with cologne . . . was missing (at the Cabinet meeting.) Stanton was late. Stanton was always late . . . he did this purposely
> 835 . . . Stanton hated Lincoln deeply and bitterly."

Having set the proper stage for his main accusation, Millard proceeds on the same page:

> " . . . And then Stanton made his delayed . . . entrance, and Lincoln seemed to freeeze . . .
> "But as Lincoln sketched his humanitarian plans, he knew full well that some of the smiling . . . faces

before him masked hatred. To radical Republicans like the weasel-souled Stanton, every breath Lincoln drew was anathema. If he lived through these four new years . . . every dream and scheme they had for raping the conquered South would be shattered."

(d) On page 106, Column I, center—Stanton's following act explains the caption under the *photo on page 36*, and again Stanton is deliberately painted in dark colors.

"Lincoln went into the War Department office where Stanton hunched over his notorious "little bells'.—the bells he had boasted could tinkle any man in the Union into prison without charge or trial." (This bell story really pertains to Seward, not to Stanton, as Millard admitted on cross-examination, but it fits well into Millard's designs.)

The story continues:

"He (Lincoln) asked for a bodyguard. 'Stanton', he said, 'did you know that Major Eckert can break a poker over his arm?"

"Stanton peeked up, startled. . . . "

"Stanton flatly refused. . . . "

836 (e) Next comes a demonstration that it was Stanton's duty to guard the President, and Millard showers Stanton with irony and a bit of ridicule. On page 106, column I, bottom—

"At the War Department, on which lay the tremendous responsibility of guarding the life and safety of the President, they labored mightily. . . .

"Or did they?"

. . .

"Secretary Stanton yawned, . . . went home to a leisurely dinner. Afterward he went over for a chat with the invalid Seward and sat around with other guests for hours. Then the sound of a band re-

minded him that a procession was going to serenade him. Stanton hurried home, made them a pretty speech and went up to bed. He was standing in his long drawers, . . . when a servant burst in with the news of Lincoln's assassination."

(f) On page 106, column II, top—suspicion against Stanton is heightened.

"And afterward Stanton swore under oath, despite the testimony of Crook and one Homer Bates of his own office, that Lincoln had not been to the War Department that day at all."

Furtlfer to show Stanton's duplicity Millard then states that:

"Only three messages were recorded that night for either Stanton or Eckert, and not a single wire went out."

(g) The next and again derogatory mention of Stanton appears on Page 111, column I, line 12—in a description of Lincoln's death scene:

837 "In rushed the Secretary of War, Edward Stanton, who visualized himself as temporarily the Chief Executive of the United States and acted accordingly. When Mrs. Lincoln, half mad with grief and shock, fainted at the sight of her dying husband, Stanton waved his arms, bawling, 'Take that woman out of here! Get her out and don't let her come back!' For a little while Stanton was a tin-plated god, with the plating wearing thin."

(h) To show that Stanton was well informed of all details of the assassination, Millard stresses the fact that two eye-witnesses advised him of what they had seen, and put it this way:—(Page 109, column I, prior to break.)

"These two, Lt. Crawford and Captain McGowan . . . rushed across . . . to report direct to Stanton . . ."

(i) To indicate that even Stanton's preliminary investigation was a star-chamber session, Millard describes it like this. (Page 114, column II, center.)

> "Meanwhile, at the Peterson home . . . Secretary of War Stanton sent for . . . his good friend . . . Justice Carter, and set up headquarters."

(j) Next Millard points out guilty knowledge on the part of Stanton prior to the tragedy: (Page 117, column I, bottom—column II, top.)

> ". . . the War Department unwittingly betrayed itself . . . Afterward Stanton tried to cover up by tracing a letter . . . but . . . only previous knowledge, concealed and denied and unused by the War Department, could have accounted for those swift arrests."

838 (k) Further suspicion is thrown on Stanton by connecting him with John F. Parker, Lincoln's delinquent bodyguard, for whose strange escape from punishment he may have been responsible, and who was not dismissed until Stanton himself lost his position.

Page 117, column I, center:

> "From an unnatural to...nce, the trial board had swung to an equally unnatural intolerance, almost as if some mysterious protection over Parker had been suddenly withdrawn. . . .
>
> Parker had one consolation . . . Secretary Stanton, too, had just been fired."

(l) Stanton's complicity is fully demonstrated on page 114 by his delay in releasing the news of the assassination and withholding the assassin's name. This is what Millard says—(Page 114, column II, line 22 from bottom):

> "The first and most important job of course, would be to identify the assassin and broadcast his identity . . . Both (Police Chief) Richard and General Augur (head of the Washington garrison) were in constant touch with Stanton."

(m) And more of the same: (page 114, column II, paragraph prior to last):

"At the moment Stanton had everything . . . the assassin's name and full description, absolute control over the telegraph lines—and all the vast machinery of the War Department at its peak of organization. 839 What use did he make of it?"

Follows the answer on page 114, column II, last paragraph:

"Stanton wasted about four hours before releasing the first notice of the assassination . . ." "He waited another hour after that—until the morning papers would be well into their press runs—before announcing the name of the suspect. . . ."

(n) Millard points out that Stanton cleverly disguised his delinquency, page 114, column II, line 25 from bottom:

". . . Stanton raged through such a massive list of less important activities that the dust he raised almost completely obscured the more important activities left undone."

(o) Next Millard goes into further detail; page 115, column I, paragraph 3,

"But not all of Stanton's errors . . . were simple errors of omissions. It is shockingly significant that, with all the evidence the government had that the escape route would naturally be Southward . . . the southern papers were the last ones to be notified."

(p) Millard indulges in some more ironic remarks about Stanton; page 114 column II, line 26 after break:

". . . we have a marvelous picture of the cool Stanton *dominating the scene. . . .*" (Italics supplied).

(q) Comes Stanton's part in the ineffectual pursuit of Booth, page 115, column II, last 3 paragraphs:

". . . The remarkable Secretary Stanton . . . was sending dispatches to commanders . . . the first orders . . . went to Colonel Thompson at Darnestown . . .

840 (Page 115, column II, last 2 paragraphs)

"on the peculiar theory that a murderer employed by the South would seek refuge in the country occupied by his enemies."

(r) In the meantime a hostler named Fletcher had made a report indicating the route Booth had taken, and Millard tells what Stanton did about it Page 114, column II, paragraph 2—:

"Now of course, there could be a swift concentration of pursuit along the road identified by Fletcher . . . But nothing at all was done about Fletcher's report!"

(s) Stanton now put the pursuit into the hands of a known rascal—Pages 117, column I, line 10 after break:

"And over them all Stanton put Lafayette Baker, whom subsequent exposures would brand as one of the greatest unhanged rascals in history."

(t) To make it clear that Stanton was protecting Booth, Millard tells how Stanton prevented Booth's capture by Major O'Beirne, page 118, column I, center:

"O'Beirne made the error of telling . . . what he had found out . . . Back came a . . . flat order from Stanton to remain on the Maryland side."

(u) Later three ex-Confederate soldiers and two other men, who had helped Booth, were gently treated by Stanton. Page 117, column I, next paragraph before break, and page 118, column I, line 15:

"Yet Cox and Jones, who willingly and knowingly kept, protected and guided the fugitives, were never called as witnesses, never brought to trial, nor punished in any way . . ."

841 "Here again we face the incomprehensible mystery of the War Department's selective vengeance. The three soldiers who openly confessed to harboring, siding and protecting the assassin were never * * * punished."

(v) To make sure that Stanton remains in the reader's mind, he and the War Department are mentioned seven times in Column II on page 119 and eight times on the last page of his article.

Page 119, column II, line 16 after break.

"Holt, Stanton's close friend", so Millard intimates, destroyed detrimental testimony.

Page 119, column II, line 23 after break.

All that the War Department retained was the blue necktie * * * the only item of clothing that could have no value in establishing identification.

Page 119, column II, line 35, after break.

Booth's body was whisked away by two detectives "toward a destination only they and Stanton knew."

Page 119, column II, line 36 after break.

The next day the Secretary of War blandly answered * * * that he had ordered Booth's body secretly buried * * *

Page 119, column II, par. 4 from bottom.

Then, in 1867, Lafayette Baker broke with Stanton * * *

Page 119, column II, par. 3 from bottom.

By order of Stanton, he, Baker, had buried the body***

Page 119, column II, last par.

The War Department had had its chase and capture. Now it must have its trial * * *

Page 120, column I, paragraph 5:

"Every move the War Department made was a bald
842 and obvious effort to rob the accused of any possible hope."

Page 120, column I, paragraph 5:

"And the War Department made it brutally clear * * * that it would not view with favor any lawyer who tried * * * to defeat the government's avowed purpose."

Page 120, column II, line 5:

"Upon a consultation with the Secretary of War • • • it is thought advisable that no action be taken in regard to • • • Surratt."

Page 120, column II, line 8:

"The War Department delayed or ignored repeated messages from men abroad • • • When the pressure grew too great, Stanton cut his Gordian Knot with one swift stroke • • •"

Page 120, column II, paragraph 5 after break:

"Stanton later found himself under hard fire • • •

Page 120, columnn II, paragraph 6 after break:

"Soon after that, Stanton was finished as a dictator • • • Stanton gave up, vacating the office he had held • • •"

Page 120, column II, paragraph 7, after break:

"Stanton's health failed rapidly. He seemed • • • like a man on the verge of madness."

843 Page 120, column II, paragraph 8, after break:

"Not long afterward, Stanton was dead. Though his family denied it, there were rumors that he had committed suicide." (Shadow, p. 228, Col. 1 after break, and p. 229, Col. II).

(50) The following comparison shows how closely Millard copied Eisenschiml's Stanton story.

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
(a) Page 36, caption: Why did he (Stanton) refuse Lincoln the guard he asked for?	Page 33, title of chapter The President is refused protection.
(b) Page 105, column I, after break:	Page 4, line 12:

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
. . . Stanton, the Secretary of War, with his curled beard that he doused with cologne . . .	(Stanton), with a long beard which he kept perfumed . . .
(c) Page 105, column I, par. 4 after break:	Page 4, line 3:
And then Stanton made his . . . entrance. Lincoln seemed to freeze . . . He said abruptly, "Gentlemen, let us proceed to business."	Stanton entered. The President stopped abruptly. "Gentlemen," he said, "let us proceed to business."
(d) Page 105, column I, par. 1, after break:	Page 4, line 6:
Stanton was late. Stanton was always late . . . he did this purposely to feel the power of his position.	Stanton . . . usually came late. It was his way of indicating the superiority he felt.
(e) Page 106, column I, center:	Page 32, line 6:
He (Lincoln) asked for a bodyguard. "Stanton," he said, "did you know that Major Eckert can break a poker over his arm? . . . May I take him?" . . . Stanton flatly refused . . .	The President . . . asked Stanton to let him have his chief aid, Major Eckert. "I have seen Eckert break five pokers . . . over his arm . . . May I take him?
	Page 32, paragraph 3, line 1:
	This request Stanton refused point blank.
844	
(f) Page 106, column I, bottom:	Page 31, last paragraph:
At the War Department, on which lay the tremendous responsibility of guarding	. . . the attorney general of the United States placed the responsibility

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
the life and safety of the President . . .	for guarding Lincoln . . . squarely on the shoulders of Secretary of War Edwin M. Stanton.
(g) Page 106, column I, bottom:	Page 37, last paragraph:
Secretary Stanton yawned, . . . went home to a leisurely dinner. Afterward he went for a chat with . . . Seward and sat around with other guests for hours. Then the sound of a band reminded him that a procession was going to serenade him. Stanton hurried home, made them a pretty speech, and went up to bed.	Stanton went home and dined as usual. He then went to see Secretary of State Seward . . . There he found six or eight people and stayed chatting with them till he heard the music of a procession which had notified him that it would call on him. Thereupon he went home, made the serenaders a little speech . . . and went to his bedroom.
(h) Page 1106, column II, top:	Page 34, line 3:
And afterward Stanton swore under oath . . . that Lincoln had not been to the War Department that day at all.	What can it mean that Stanton during a congressional investigation, testified under oath that Lincoln did not visit the War Department at all after April 13?
(i) Page 106, column II, before break:	Page 35, paragraph 2:
Only three messages were recorded that night for either Stanton or Eckert, . . .	Only three telegrams addressed to either Lincoln or Stanton are officially on record as having arrived at the War Department during the evening . . .

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
(j) Page 111, column I, line 14:	Page 419, paragraph 3:
When Mrs. Lincoln, half mad with grief and shock, fainted at the sight of her husband, Stanton waved his arms, bawling. "Take that woman out of here! Get her out and don't let her come back!"	Mrs. Lincoln, frightened and distracted, had fallen to the floor in a faint. A sudden rage possessed Stanton. Brutally he gave orders to take "that woman" out of the room and not to let her come back.
(k) Page 114, column II, center:	Page 69, par. 2, line 4:
Meanwhile, in the Peterson home . . . Secretary of War Stanton sent for . . . his good friend . . . Justice Cartter, and set up headquarters.	In the back room of the Peterson house he (Stanton) and the Justice Cartter . . . (a close friend of Stanton's) had established a preliminary court of inquiry.
845	
(l) Page 117, column 1, bottom:	Page 49, paragraphs 2 and 3:
Arnold and O'Laughlin had been arrested so swiftly that the War Department unwittingly betrayed itself . . . only prior knowledge, concealed and denied and unused by the War Department, could have accounted for those swift arrests. . . .	On what information could O'Laughlin and Arnold possibly have been suspected . . . ? In arresting these two men, the War Department erred . . .
(m) Page 117, column I, center:	Page 19, center paragraph:
From an unnatural tolerance, the trial board had	Parkers last offense was perhaps the least impor-

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
swung to an equally unnatural intolerance, almost as if some mysterious protection had been suddenly withdrawn . . . . Parker had one consolation . . . Secretary Stanton, too, had just been fired.	tant one . . . Yet the official axe fell promptly and relentlessly, . . . A few weeks prior to Parker's dismissal, Secretary of War Stanton had finally been ousted from his position . . .
(n) Page 114, column II, line 22 FROM BOTTOM:	Page 67, paragraph 3:
The first and most important job of course, would be to identify the assassin and broadcast his identity . . .	If Stanton wanted Booth caught, it was important to broadcast his name.
(o) Page 114, column II, bottom:	Page 68, line 3:
Both (Police Chief) Richards and General Augur were in constant touch with Stanton.	Richards immediately got in touch with General . . . Augur . . . Augur, in turn, was in and out of the Peterson house . . . (where Stanton was) all night long . . .
(p) Page 114, column II, paragraph before last:	Page 69, paragraph 2:
Stanton had . . . the assassin's name and full description . . .	Stanton had full knowledge of the assassin's identity . . .
(q) Page 114, column II, last par.:	Page 65, line 7:
Stanton waited about four hours before releasing the first notice of the assassination.	—the first dispatch of the Secretary of War was not written out until more than three hours after Booth's deed.

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
(r) Page 115, Column I, 1st Par.:	Page 67, paragraph 2:
He (Stanton) waited another hour after that . . . before announcing the name of the suspect.	Not until 3 o'clock in the morning did Stanton finally disclose the name of the assassin.
846	
(s) Page 115, column II, last 3 par.:	Page 91, line 7:
" . . . the remarkable Secretary Stanton . . . was sending dispatches to commanders . . . the first orders . . . went to Colonel Thompson at Darnestown . . . "	. . . Military dispatches left the War Department . . . Colonel Thompson, commanding at Darnestown, was probably the first to be instructed . . .
(t) Page 114, column II, par. 2:	Page 116, top:
Now, of course there would be a swift concentration of pursuit along the road identified by Fletcher . . . But nothing at all was done about Fletcher's report.	The story . . . Fletcher told should have caused all pursuit to converge on the roads through the Maryland peninsula, but this was not the immediate result.
(u) Page 117, column I, line 10 AFTER break:	Page 121, top:
And over them all Stanton put Lafayette Baker . . .	Colonel Baker had been summoned by a direct telegraphic appeal from Stanton.
(v) Page 118, column I, center:	Page 123, line 13:
O'Beirne made the error of telling . . . what he had found out. Back came a . . .	(O'Beirne) gave to the War Department the gist of the information . . . orders came

MILLARD'S ARTICLE	WHY WAS LINCOLN MURDERED?
flat order from Stanton to remain on the Maryland side.	over the wire from Washing to . . . remain on the Maryland side . . .
(w) Page 117, column I, paragraph before break:	Page 301, line 5 from bottom:
Yet Cox and Jones, who willingly and knowingly kept, protected and guided the fugitives, were never . . . brought to trial . . .	Yet, in the face of all this evidence, no indictment was brought against either Cox or Jones . . .
(x Page 118, column I, line 15:	Page 136, line 5:
Here again we face the incomprehensible mystery of the War Department's selective vengeance.	Another bizarre feature . . . is the failure of the War Department to prosecute some people . . .
(y) Millard, p. 120, Col. II, par. 8, after break:	Shadow, p. 228, line 1 after break, and p. 229, line 11:
Not long afterward, Stanton was dead. Though his family denied it, there were rumors he had committed suicide.	That Stanton did not die a natural death but committed suicide has been asserted . . . Against these Stanton's family . . . maintained an attitude of . . . silence.

(51) Following the publication of the said book-length article in defendant's magazine True in February 1953, a number of persons, including students of Abraham Lincoln, the Civil War and American history, called Eisenschiml's attention to the said publication, remarking upon the close similarities between it and Eisenschiml's said two books, and asking him if the said publication was written by him under a pseudonym. (Par. 22 of Plaintiff's Exhibit 7).

847 (52) At that time Eisenschiml was seeking to find a publisher for a new edition of Why Was Lincoln Murdered? and was assured by his agent, prior to said infringing publication, that it was likely that such publisher would be found. Thereafter he was advised by the agent that the said infringing publication made it unlikely that such publisher would be found and that if found the sale of copies would be impaired. (Par. 23 of Plaintiff's Exhibit 7).

(53) One Charles E. Mason, a former State's Attorney of Lake County, Illinois, a lawyer, and a student of history, wrote to defendant without plaintiff's knowledge, under date of February 19, 1953, calling his attention to what appeared to him to be infringements of the copyrights of the plaintiff on the said two books. Under date of February 27, 1953, the defendant replied to the said Charles E. Mason as follows:

(Text of letter part of par. 24 of Plaintiff's Exhibit 7—Appendix pp. 28-9)

(Admitted by defendant—Plaintiff's Exhibit A, of Deposition of Ralph Daigh—Plaintiff's Exhibit 13—pp. 18 and 19 thereof).

(54) The February 1953 issue of the defendant's publication True, containing the infringing book or book-length article, was sold to the public at 25¢ per copy. 1,898,285 copies of the said February 1953 issue were sold, bringing in a total of $474,571.00 from sales, and that in addition there was an advertising revenue for the said issue of $193,772, making a total income of $668,343.00. (Admitted).

(55) The infringing book or book-length article took up about 25% of the contents of the February 1953 issue of True and was the main feature of the said issue. (By computation and examination of issue).

(56) Except for the material and language taken from Eisenschiml's said two books, the said infringing book or book-length article published by defendant could not have been written. The said copied or pirated material and language are the heart and gist of the said book or book-length article. (See findings 25 ff. hereinabove and Plaintiff's Exhibit 20).

(57) In addition to the thirteen identical passages picked out by Dr. Riddle, outstanding examples of Millard's copying of language found by him are in the following Quotes:

849

MILLARD:	EISENSCHIML:
Quote 4	
In his memoirs, Grant skillfully slid over the incident with the excuse of much work to be done and an overwhelming anxiety to see his children.	In his memoirs, Grant passed over this episode skillfully . . . if able to finish his work his intention was to join his children.
Quote 11	
How about the busy Major Eckert? He . . . did not return to his office that night. There is no record . . . of how he spent the evening. . . .	Now as to Eckert . . . was he at his post during the hours . . .? He was not. We have no record of his doings that night. . . .
the news of the assassination reached him at his home, where he stood . . . shaving.	he was found at home shaving, when one of the telegraphers came . . . to advise him of the catastrophe.
Quote 14	
. . . We find Parker on trial again, this time charged with being drunk . . . in a home of ill fame operated	Parker again found himself before the Police Board. . . . This time he was accused of having visited a house of

MILLARD:	EISENSCHIML:
by one Annie Wilson . . .	prostitution kept by a Miss Annie Wilson . . .
In his defense Parker paraded . . . witnesses. They all testified warmly to the good character of John Parker, one girl going so far as to cry . . . that John had been staying at the boarding house for five weeks, and had never been seen drunk.	The witnesses . . . proved staunch champions for the defendant, one of them going so far as to declare that he had never in his life seen Parker drunk, "and he had been in that house for five weeks."
Quote 18	
. . . there is no record of any dispatch at all, and none was ever found. Forbes made no public mention of it at all.	If a document was found on Lincoln's body, the story has never been told. If Forbes failed to deliver it, he never disclosed the fact.
Quote 20	
At the trial McGowan's testimony made no mention of	The witness McGowan made no mention . . . of
Quote 28	
The Richmond Whig got no notice at all, . . . It was twelve days before Macon, Georgia, heard the news.	The Richmond Whig did not print the news until Monday morning. . . . The Macon Daily News . . . did not receive Stanton's dispatches until April 26.
850	
Quote 29	
One L. A. Gobright of the Associated Press was just closing his Washington office when the terrible news came.	L. A. Gobright, agent of the Associated Press at the Capital . . . was about to close his office . . . when he was informed of the tragedy.

MILLARD:	EISENSCHIML:
Rushing out, he quickly wired his paper . . .	Rushing to the telegraph he sent a short special . . .
From there Gobright hurried to Ford's theatre for more details . . . found the derringer on the floor.	. . . he tore over to Ford's theatre . . . and was fortunate . . . to find Booth's derringer on the floor . . .
Quote 32	
The first order . . . went to Colonel Thompson at Darnestown.	Colonel Thompson, Commander at Darnestown, was probably the first to be instructed . . .
Quote 34	
John Parker had vanished after the assassination . . . what he did . . . nobody knows.	What Parker did . . . after the assassination has not been . . . ascertained.
But at 6 o'clock . . . he stumbled into Police Headquarters towing . . . a prostitute named Lizzie Williams . . . Lizzie was promptly discharged.	The police blotter . . . shows that at 6 AM . . . Parker brought to headquarters a woman by the name of Lizzie Williams . . . who . . . was promptly discharged.
Quote 35	
O'Beirne was writing in his journal "Samuel Cox. His mill servant states to another colored man that Cox had been cooking provisions lately, and carrying it to persons down in the swamps" . . . That close O'Beirne came to making the capture. . . .	In a diary (O'Beirne wrote). "Samuel Cox his mill servant states to another colored man that Cox had been cooking provisions lately, and carrying it to persons down in the swamps. . . ." That close O'Beirne came to getting his man.
Quote 40	
The . . . tavern . . . was . . . a ramshackle farm tavern with a peach orchard . . . and	(It) was a solitary farm tavern at a crossroad, a few sheds and barns . . . and a

MILLARD:	EISENSCHIML:
a few sheds and barns lying across the road. . . . His mother had leased the place . . . for $600.00 a year.	peach orchard. . . . The farm was . . . let . . . for $600.00 a year.
Quote 42	
(Paine had) the strength to subdue the . . . still-muscular Lincoln.	Paine with his . . . strength was to have subdued the powerful Lincoln.
851	
Quote 49	
The three soldiers, who openly confessed to . . . aiding . . . the assassins were never tried . . . Jett was even used as a government witness.	Jett, Bainbridge and Ruggles never denied their . . . parts, but none of them were ever prosecuted, and Jett even appeared as a witness for the government.
Quote 52	
Would a dying man be surprised at hearing his own name spoken?	What can be the meaning . . . a dying man hears his name mentioned . . . and acts surprised.
Quote 56	
The American Vice Consul at Liverpool . . . got a shocking lesson . . .	The vice consul at Liverpool probably got the shock of his life . . .
Quote 62	
Announcements played up the presence of General Grant in bold headlines and mentioned the Lincoln as a small-type after-thought.	The advertisements centered around . . . Grant, barely mentioning the President.
Quote 65	
A good . . . lawyer could have pounced on this . . . but Frederick Stone, his counselor, said nothing at all about this.	A clever lawyer might have made something out of this . . . But Frederick Stone, who conducted the defense, did little . . .

(58) Thomas J. Naughton was associate editor of True at the time that Millard's earlier article, "The Devil's Errand Boy" was accepted for publication. Naughton edited it for publication. It made so great an impression on him that as a result he later suggested to Millard the writing of a book-length feature on the mysteries and peculiarities of the assassination of Lincoln. (Naughton testimony, transcript p. 178). Millard thereupon submitted such article to Naughton and, after Naughton, Ken Purdy and Ralph Daigh had read and approved it, it was accepted for publication. Again Naughton edited the article for publication. Because it was much too long, it was cut drastically. Naughton made all of the cuts, with the general approval of Millard, who was not told which
852 particular passages were to be deleted. Among the passages cut from the article was the only reference to Eisenschiml, the passage in question reading as follows:

> "Otto Eisenschiml, probably the world's leading authority on the mysteries of Lincoln's assassination, has in one curt sentence treated Stanton's diatribe to the respect which it deserves . . ." (Millard deposition p. 263).

Asked if he had read any books about the Lincoln assassination, Naughton replied: "No, sir. I don't need to. I read Millard's story." (Naughton testimony, p. 200). Later he said he had been joking when he said this. (p. 203).

(59) The defendant has a research department but the Millard article was never submitted to it for check-up before publication. No effort of any kind was made prior to publication to check for possible copyright infringements in the article. The defendant relied upon its editor and Millard's previous good reputation. The article was never submitted to any historical scholar or Lincoln authority despite the recommendation of one of the editorial readers

of the article. No one checked on the sources and credits. (Naughton testimony, transcript pp. 202-204).

(60) The plaintiff called Dr. Donald W. Riddle as an expert witness in his behalf. The direct testimony of this witness required 103 pages (Transcript pages 89 to 170, both incl., and 219 to 241, both incl.) and would have been considerably shorter except for the insistence by defendant's attorneys that all of the parallels and derivations found by Dr. Riddle be read verbatim into the record (despite their being set forth in Plaintiff's Exhibits 15 and 16.) The cross-examination of Dr. Riddle was by far the most protracted of the case, consuming 772 pages (Transcript, pages 242 to 284, both incl., 361 to 1091, both incl.) Plaintiff objected to the length and nature of this cross-examination (Transcript pages 1057, 1058). It is, therefore, important to give the qualifications of Dr. Riddle and the essentials of his testimony. 853

(61) Dr. Riddle received his education at Northwestern University, Garrett Biblical Institute, the University of Chicago, Heidelberg University and Harvard University. (Transcript 219). He has received the degrees of Bachelor of Philosophy, Bachelor of Divinity, Master of Arts, and Doctor of Philosophy. He has taught Biblical literature and languages at Kimball College (1922, 1922, 1925), New Testament history and literature at University of Chicago (1923, 1926 to 1942) and American history at the University of Illinois (1946 to date). From 1942 to 1946 he was in the Army. (Transcript page 220). He has published a number of books and other writings on Biblical language and literature, and another book, on the Lincoln theme, Lincoln Runs for Congress. He has another book, Abraham Lincoln Congressman, almost ready for publication. He belongs to learned societies like the American Historical Association, the Mississippi Valley His-

torical Association, the Illinois State Historical Society and (until it went out of existence) The Abraham Lincoln Association (Transcript page 221). He has also belonged to various learned societies in the field of Biblical literature. He has read all of the principal literature on Lincoln biography and has exhaustingly worked the sources in his specialized field, Lincoln's Congressional career. (Transcript, p. 222).

(62) Dr. Riddle is head of the Division of Social Sciences at the University of Illinois, Chicago Undergraduate Division. His primary field in teaching is American history. He has been a teacher for 32 years. (Transcript 89).

He has taught American history for the past eight 854 years. Prior to that he taught in the field of New Testament history and literature. His studies in that field included the comparison of tex r language. (Transcript 90). In attempting to work out the problems of literary relationship in that field the Greek texts are printed in parallel columns so that at a glance one can see the identity or similarity or difference between the various Gospels. The same methods, he testified, are used for comparison of other documents, sources or books. (Transcript, page 91).

(63) He read the two books by plaintiff (Plaintiff's Exhibits 1 and 2) that are in issue herein and the Millard article (Plaintiff's Exhibit 3) (Transcript pages 93-94). With the plaintiff's said two books and the Millard article before him, he made a comparison of the language in the article with the language in plaintiff's two books. He found passages in the article identical with passages in plaintiff's two said books. (Transcript, page 95). He marked on the margin of the article the points at which he observed similarity. He proceeded to underline instances of close similarity. (Transcript, page 96). On the basis of that study he found 85 instances of parallelism between the Millard article and the Eisenschiml books, and of those 85

(Plaintiff's Exhibit 5) he found 13 in which there was identity of language of from 13 to 33 words. (Plaintiff's Exhibit 16 for identification). These he underlined in his copy of the Millard article (Plaintiff's Exhibit 15) (Transcript page 97). The thirteen said instances of identical language are set forth on pages 99 to 105, both inclusive, of the Transcript. The said 85 parallelisms, including again the 13 instances of identical language, are set forth on pages 111 to 169, both inclusive, of the Transcript.
855 These are largely the same as plaintiff's 66 quotes, with additions.

(64) Dr. Riddle is receiving no compensation for testifying or for other services in connection with the case. He is not related to Eisenschiml or counsel. (Transcript 219, 252).

(65) He is familiar with the reputation of Eisenschiml among Lincoln experts and American historians (Transcript pages 222, 223). He knows the reputation among Lincoln experts and American historians of plaintiff's two said books, and particularly as to originality. (Transcript, pages 223, 224). The reputation is that Eisenschiml is a scholar who has produced the two books on the basis of original research in original sources with the result that new and important findings are contained in the books as published. (Transcript, p. 224). In Riddle's own opinion the two books are highly original. (Transcript, pages 226, 230). He testified to the novelty and originality of Eisenschiml with respect to the various items set forth in paragraphs 19 and 20 of the plaintiff's affidavit for summary judgment. (Transcript, pages 232 to 238, both inclusive).

(66) Dr. Riddle did not assist in the preparation of the parallel columns as they appear in Plaintiff's Exhibit 7, and did not receive a copy of them until after he had done his own comparing of texts. His undertaking was entirely

independent; he worked on his own. (Transcript, page 243). The plaintiff's attorney, Elmer Gertz, asked him to appear as an expert witness and gave him the two Eisenschiml books and the Millard article, but no guidance or direction. He did the work of comparison on his own. (Transcript, page 251). Gertz did not give him the idea of parallel columns; it was his own idea. Gertz made no reference to anything he (Gertz) had done. (Transcript, page 252) and no suggestions (Transcript, page 254).

856 (67) Dr. Riddle did not go beyond the four corners of the conflicting works (Transcript, page 255). His general conclusion is that "the substance of the Millard article is derived from (the Eisenschiml books)" Transcript, page 1089).

(68) Joseph Millard, the author of the article in issue, testified to his general attitude, his state of mind, on the use of sources. He was asked, ". . . did you in many instances attempt to examine original sources?" To this he replied: "In all instances I attempted to. In many instances I was unable to without taking a lot of expensive trips to the places where that source material was." (Millard deposition, p. 533). He was asked with respect to matters that he thought were Eisenschiml's discoveries, if Eisenschiml was the first scholar to call them to his attention, and he replied: "That is a fact." Then he was asked as to such matters: "And then . . . you either verified it or took his (Eisenschiml's) word for it?" To this he answered: "Yes." (Millard deposition, p. 492). He was asked: "Did you understand at the time you wrote your article that you had the right to use any factual material found in copyrighted books without looking at original sources?" He answered: "I thought I had the right to." (Millard deposition, p. 520). He thought, also, that he had the right to use any surmises or inferences. (Millard depo-

sition, pp. 534-535). He said: "I believe I could say without error that the only statements I did accept without being able to at least prove the existence of primary sources were a couple which I took from Dr. Eisenschiml because I simply wouldn't think of questioning his veracity on any of this matter. But in every other case I am positive that I determined that sources existed even though they might
857 not have been available to me at the moment." (Millard deposition, p. 452). Thus he knew that the police records existed at one time; but he made no effort to check the original records, but relied upon Eisenschiml. (Millard deposition, pp. 452-453). As to the O'Beirne papers which, admittedly, were in the exclusive possession of Eisenschiml and never had been seen or consulted by Millard, Millard testified: "As a matter of fact, and I don't know how come, but I seemed to have missed the footnote mentioning the O'Beirne papers. Most of the statements which turn out to have been a part of the O'Beirne papers I had placed in my mind as being also available through other sources." (Millard deposition, p.).

(69) Millard admitted, in varying manner and degree, that various portions of his article were derived from Eisenschiml's said two books. At page 63 of the Millard deposition, defendant's counsel read Quote 22, and then asked: "Did you steal or pirate that from Dr. Eisenschiml?" To this, Millard replied: "I am rather afraid I did. I have sources for his later statements, but as I remember I had no source other than Dr. Eisenschiml for the original statement." (Millard deposition, p. 63). At p. 51, he said that it was from Eisenschiml that he "supplied the missing words of Mrs. Lincoln's letter about Parker." (Quote 15). At p. 52, he said as to Quote 16 that he did not have the Forbes statement at the time he wrote his article. At pp. 56 and 57 when asked twice,

with respect to Quote 18, when he read The National Republican, he failed to answer. At p. 65, when asked about Quote 23, he said that he got Fletcher's statement from Eisenschiml, and not from the archives. At p. 68, said with respect to Quote 24 that he took from Eisenschiml the research about Fletcher's being at the police station — "and that I had no other source for" it save Eisenschiml. At p. 72, he said, as to Quote 27, that he took the number of persons on the police blotter from Eisenschiml. At page 86, as to Quote 33, he said that
858 the "inference" on Lloyd's statement was "encouraged by Dr. Eisenschiml's interest in it, I am afraid." Then on p. 87, he continued with respect to the same Quote 33, "It is probably reasonable to suppose that that inference was stimulated or stirred by some of your findings, Doctor (Eisenschiml)." And on p. 88 he repeated the credit to Eisenschiml as to the same inference. At p. 89, as to Quotes 34 and 34A, he said the "inference" as to dismissals of Parker and Stanton were "drawn" from Eisenschiml. At p. 90, as to Quote 35, he said: "My sources for the quotation itself within the quotes is Dr. Eisenschiml." At p. 235, he said: "I would guess that in the case of Quotes 13, 14 and 15, regarding the life of Parker, the details on Parker, that probably comes under Dr. Eisenschiml's credits. . . ." And at p. 238, he said: "I am referring to Quotes 34 and 34A, which are in reference to Parker, and I imagine they fall under the Eisenschiml credit." This he reaffirmed on p. 239. At p. 238, he was unsure about Quote 21, and on p. 239 he was unsure about Quote 42. At p. 321 he said, with respect to Quote 28, that he never saw the Macon Daily News of April 26, 1865, and that his sole knowledge of its contents is from Eisenschiml's books. At p. 324, he said that Eisenschiml stimulated his curiosity as to premature

Lincoln death announcements (Quotes 1, 2 and 3). At p. 325, he said that he had never looked at The Newburgh Journal (Quote 3). At pp. 326 and 327 he said that he was not sure that he had seen the New York Sun of Feb. 11, 1917, the source for Quote 50. At p. 327, he said, as to Quote 50, that it is "possible" that his source was Eisenschiml's book. At pp. 333-339 he said that he had never seen the police blotters. At p. 335 he said as to the Forbes statement that he had never seen (it) anywhere except in Eisenschiml," confirming his previous statement. (Quote 16).

859 At pp. 333-339 he was not sure as to whether he had read Gleason's Magazine of History article (source of Quote 26). At p. 355-356 he said that he could not recall reading the Boston Sun Post of April 11, 1915 (source of Quote 11). At pp. 372, he was asked: "Is it possible that in your absorbing of material you tended to forget that you got some of it from the Eisenschiml books?" To this he replied: "Oh, I got some of it from the Eisenschiml books." He was asked further: "But is it possible that you got some that you now are not aware of that you got from the Eisenschiml books?" And he replied: "Yes, that's possible." At pp. 382 and again at p. 467 ff. he said that he got from Eisenschiml that material enumerated in Paragraphs 19g, h, i, n, t, u, v, gg, hh and ii of Plaintiff's Affidavit for Summary Judgment. (Plaintiff's Exhibit 7). At p. 393, he admitted, as to Quote 35, that his language and Eisenschiml's were similar. At pp. 410-411, he said that only he and Eisenschiml made the observation contained in Quote 65. At p. 436-437, he said as to the discrepancy between Grant's Memoirs and his actual doings (Quotes 4, 5, 6): "That, I believe, was queued to me by Dr. Eisenschiml's book." At p. 439, when asked what made him examine the false statements of Harris and Rathbone (Quote 22), he replied:

"That was directly Dr. Eisenschiml, as I believe I said before."

(70) Millard admitted that various portions of the cut-out, or deleted, part of his manuscript were derived from Eisenschiml. At p. 217 of his deposition, when asked if he got a certain portion of the deleted section from Eisenschiml, he replied: "Not consciously, but we have—identically the same sentence here." At pages 223-224 of his deposition, when asked the same question about
860 another portion of the deleted section, he replied: "It is a possibility. . ." At p. 249, he said as to another portion: "I have a sneaking hunch probably that is Dr. Eisenschiml's inspiration . . . It could be, it could very well be. . ." At p. 252, he was less definite, but added: "This is not a denial. . ." At pages 256-7, he said "the thought was undoubtedly inspired by Dr. Eisenschiml." Asked then, "It is not only the idea, but the language?", he replied: "That's right." At pages 267, 276, 294, he similarly credited Eisenschiml. At p. 295, he admitted "there is a similarity" to p. 264 of Eisenschiml's Why Was Lincoln Murdered? At pages 297, 301, 305, 306, 308, 310, of his deposition he said he got the material from Eisenschiml. At p. 305, he was asked, "Do you recognize that there is a similarity?" and he replied. . . "There is a similarity and a rather shocking one to me."

71 (a) Millard admitted that the matters set forth in sub-paragraphs g, l, i, j, of paragraph 20 of plaintiff's affidavit for summary judgment (Plaintiff's Exhibit 7) were among "the sensational discoveries" made by Eisenschiml. (Millard deposition, p. 378).

71 (b) During his testimony Millard read from about 66 cards, which allegedly contained his historical sources. On none of them appeared a reference to Eisenschiml's books, although he admitted on direct and cross-examination that they were in several cases the only available

source. (For example: Quotes 7, 15, 22, 24 partly, 28 partly, 34, 35, 62.)

(72) Neither Millard nor the defendant ever asked or received permission to use any material from Eisenschiml's two said books.

(73) Certain Quotes (Nos. 13, 14, 15, 21, 34, 34A) pertain to John Parker, the Presidential guard whose negligence was a contributing factor to the assassination of Lincoln. Eisenschiml was the first one to publish the full story of Parker. He dug some of Parker's record from O'Beirne's private papers, which were in his exclusive possession. This included Mrs. Lincoln's letter to O'Beirne. Millard had no access to this letter nor to the other O'Beirne papers at any time. They had never before been published, and their very existence was
861 unknown to historians. The bulk of the Parker record was obtained from the files of the Metropolitan Police Department of Washington, D.C., under great difficulties, as they were buried under an accumulation of files and records dating from 1861 to 1933. Parker's record was spread over several files, and written in the form of statistical information, without connecting narrative. Eisenschiml collected all the pertinent information and put it into a connected narrative. (Eisenschiml testimony, Transcript .....). Millard never examined any of the material at the Metropolitan Police Department of Washington.

(74) At various points during his deposition Millard displayed ignorance of well-known historical facts with respect to The Civil War.

(a) At p. 166, he said that McClellan was associated with "the radical element," whereas McClellan was the target of the hatred of the Radicals.

(b) At p. 178, he said, "I never could remember who was in that (Lincoln's) cabinet."

(c) He referred (p. 189) to the Southern viewpoint as being expressed by Charles Francis Adams; and when asked if Adams was the Northern minister to England during the Civil War, he replied: "I don't know."

(d) Millard states (page 110 of his exhibit, column 1, paragraph 3), that "we don't know where he (Booth) got the wood," meaning the wood with which the door to the Presidential box was braced. Booth took it from a music stand in the orchestra.

862 (e) Millard tries to make a mystery of Sergeant Dye's testimony, (pages 109, column II, and page 110). This so-called mystery was completely cleared up in the Surratt trial, with which he evidently is not well acquainted. (See Shadow, page 286, top).

(f) On page 110, column II Millard says, "for everyone who identified Booth, there was another equally positive that it could not possibly have been Booth." No one ever denied that it was Booth. Some were very certain that it had been Booth, some were uncertain. No one said it could not possibly have been he.

(g) On page 113, column I, paragraph 5, Millard wonders why Paine needed a guide, since he knew the way to Seward's house. Millard overlooks that Paine did not know the way to Surrattsville (where he was supposed to meet Booth), especially at night. Herold did, hence he was to act as guide.

(h) On the same page paragraph 8, Millard manufactures a new mystery for the reader. "A second rider," he says, "supposed to have been Herold. . ." He repeats it, column II, paragraph 2, by stating "if it was Herold." Of course it was Herold, as appeared from the sequence of events. There was no mystery about it at all.

(i) On page 106, column I, paragraph 6, Millard mentions Stanton's "little bells". These bells were Seward's boast, not Stanton's.

(j) The "gin-soaked prostitute" (page 34, last line) was, of course, never under suspicion in connection with the plot, as Millard indicates.

(75) The defendant took the deposition of Mrs. Joseph J. Millard (the wife of the author of the True article in issue herein) by written interrogatories, and, although objecting to some of the defendant's interrogatories, 863 the plaintiff sought at the same time answers to cross-interrogatories. When the said deponent answered the interrogatories and cross-interrogatories, the defendant refused to introduce the deposition. Therefore, the plaintiff introduced the deposition as the testimony of an adverse witness. Mrs. Millard either failed to support or contradicted the testimony of her husband on several points, namely:

(a) The Millards stored some of the personal property, furniture and other miscellaneous property that they removed from their house when it was sold. She does not personally recall that they destroyed anything when they moved. She "presumes" that she discussed with her husband putting things in storage and leaving behind anything they did not want, but she does not "actually recall any conversation on that line." She could not give the place or time of any such conversation.

(b) She does not recall saying to her husband that she was glad to see him give up writing historical pieces.

(c) She does not know that her husband destroyed any material; although she "presumes" that he did. She deposed, in answer to cross-interrogatory 13 on that subject: "As I recall we did not destroy them.

At least I didn't." There were warehouses in the community "but as I say, I don't recall destroying" anything.

(76) In the Foreword to Volume One of Abraham Lincoln, The War Years, by Carl Sandburg, at page XVII, under the heading, Sources and Acknowledgments, appeared these words:

"The elaborate researches of Otto Eisenschiml on the closing scenes of Lincoln's life are a distinct contribution; his failure to prove the main implied thesis of his book, Why Was Lincoln Murdered? (Little, Brown, 1937) does not invalidate his other work in revealing the melancholy role of the muddled John F. Parker and of other figures in drab."

(77) At page 745 of the One Volume Edition of Abraham Lincoln, The Prairie Years and The War Years, by Carl Sandburg, under the heading, Sources and Acknowledgments, appear these words:

"In the American Iliad, Otto Eisenschiml and Ralph Newman give a narrative of the Civil War by selected eyewitnesses and contemporaries. Eisenschiml's In the Shadow of Lincoln's Death (1940) relentlessly asks grim unanswerable questions."

(78) In the Millard article credit is given to Carl Sandburg at two places (p. 115, Col. II, after break; p. 111, Col. II, prior to break) and to DeWitt in one place (page 111, Col. II, prior to break). In addition, Millard frequently mentions a number of the characters who wrote books and articles, such as Crook, Baker, Ferguson, Gleason, Pitman and others.

(79) Dr. Ernest Samuels, professor of English at Northwestern University, testified in behalf of the defendant. He had taught from 1931-39 at the State College of Washington, was visiting associate professor at the University of Chicago in 1950, and the rest of the time

he has taught at Northwestern; recently becoming a full professor there (Testimony of Samuels, Transcript p. 1877). He received his Ph. B. in 1923, his J.D. in 1926, M.A. in 1931 and Ph. D. in 1942. He has written two 865 English text-books and a biography of the Young Henry Adams. (Transcript p. 1878). He is a corresponding member of the Massachusetts Historical Society. (Transcript p. 1879). At Northwestern he supervises the work of about 1200 students and 32 instructors. He handles the problems of cheating by students. (Transcript 1882). He is not an expert on the Civil War or Lincoln, (Transcript p. 2140) except as they pertain to the Adams family and is not familiar with the literature of the assassination. After he had read Why Was Lincoln Murdered? and the Millard article, but not In the Shadow of Lincoln's Death, he was asked, and paid for, his opinion of the originality of the Millard article. (Transcript p. 2069) After he had given his opinion that the Millard article is an independent work, and had been paid therefor, he agreed to testify as an expert witness herein, for which he is also to be paid. "I am no volunteer witness", he said. (Transcript p. 2064, 2065).

(80) Subject to the plaintiff's objection, Defendant's Exhibit 4 of May 16, 1955, was received in evidence. In the form it was originally received in evidence, the document consisted of approximately 100 typed pages in alphabetical order according to authors. It was later augmented by a number of pages. The document purports to give excerpts from various books, allegedly containing source material for the Millard article. In its original form, each excerpt listed the name of the author and book, the edition by year, the pages excerpted, the library in Chicago where the book was found, the quotes and affidavit paragraphs to which the excerpt allegedly pertained, whether consulted by Eisenschiml or Millard or both of

them, and other similar allegations. The one who prepared the document was not called as a witness. The only witness who testified with respect to the document was Dr. Ernest Samuels, called by the defendant as an 866 expert. He testified that when he first saw the 66 quotes, he was amazed by the close parallels that he found (Transcript p. 1907, 1995-6). But when he studied the Millard article further and sampled the material in Defendant's Exhibit 4 of May 16, 1955, he changed his mind about the closeness of the parallels and decided that there was no over-all plagiarism and that Millard had done an independent job of research.

(81) On cross-examination, he admitted that he had not read the exhibit through and that he had no knowledge as to its accuracy in any respect, and particularly as to whether Millard had consulted any of the alleged sources, or where, or when, or whether the excerpts were accurately set forth, or whether they pertained to any of the quotes or affidavit paragraphs. (Transcript pages 1987-8, 2071-2081). It was agreed, subject to verification, that none of the excerpts in Defendant's Exhibit 4 of May 16, 1955, referred to quotes 2, 3, 10, 12, 17, 21, 22, 23, 30, 32, 34, 40, 43, 44, 47, 48, 49, 52, 63, 65, or 67, nor to affidavit paragraphs 19c, 19d, 19m, 19n, 19q, 19v, 20f, 20g or 20k. (Transcript pages .....). After plaintiff's counsel had cross-examined Dr. Samuels at considerable length with respect to the exhibit (Transcript pages 1986 ff., 2071 ff. and virtually all of cross-examination), defendant asked leave to withdraw the bottom portion of each page which purported to tie in the excerpt with the quotes and the affidavit paragraphs and to indicate consulting thereof by Millard or Eisenschiml. (Transcript pp. 2269-74). Plaintiff's counsel reserved the right to have costs and fees charged by reason of these circumstances. (Transcript p. 2274).

(82) During the course of the cross-examination of Dr. Samuels, it was brought out that in his book The
867 Young Henry Adams, there are numerous inconsistencies and errors of punctuation and grammar. (Testimony of Samuels, pp. . .....).

(83) Dr. Samuels testified that in his opinion, one of the elements of originality in the Millard article was his use of dreams, flights of fancy, and excursions into the occult. (Testimony of Samuels, transcript pp. 1899 and elsewhere). In Eisenschiml's book, Why Was Lincoln Murdered? (Plaintiff's Exhibit 1) there are also dreams, flights of fancy, and excursions into the occult, including the following samples:

(a) p. 16, par. 5, after break.

"Many peculiar things, which history has seen fit to overlook, happened in and around the presidential box that evening."

(b) p. 17, line 8, before break.

"One can visualize the pathetic figure of the patrolman . . . roaming the streets of the Capital. . . ."

(c) p. 137, last par., lines 2 and 3 on top and line 3 from bottom.

"It was almost as if an invisable guardian angel were watching over his (Booth's) every stop and shaping fortune in his favor . . . the Fates are kind to the fugitive. . . ."

(d) p. 3, last 2 lines.

"He (Lincoln) then told of a dream that had come to him during the night. . .

(e) p. 5, all, especially par. prior to last.

"Had anyone been able to read the significance of these two incidents, he would have recognized in them the shadow that all great events are said to cast before them. . ."

(f) p. 40, Title of Chapter "Premonitions. . . ."

(g) p. 40, line 5.

. . . he (Lincoln told . . . of a pitiful dream he had
868 had, in which he saw himself on a bier in the East room of the White House. . . ."

(h) p. 40, line 7.

"William Crook . . . . remembered that Lincoln had said goodbye to him instead of good night. . . ."

(i) p. 43, last 4 lines.

The Chief Executive suddenly turned to him (Crook) and said: "Crook, do you know, I believe there are men who want to take my life? . . . But if it is to be done, it is impossible to prevent it."

(j) p. 136, line 1 after break.

"Another bizarre feature in the story of Booth's pursuit is the failure of the War Department to prosecute some people. . . ."

(k) p. 155, last 2 lines before break.

". . . the only argument which apparently can be put forth in its favor is that, at times, truth is stranger than fiction."

(l) p. 61, line 5. Mention of Good Friday.

(84) Dr. Samuels testified that Millard deliberately crowded his story with unexplained mysteries. In fact Millard in several cases went out of his way unnecessarily to explain some of his mysteries as in the following:

Millard Article
Page 34—

(a) The mystery of "the gin-soaked prostitute" who was said to have been under suspicion of complicity in the assassination.

Page 117—
Column I
Top

This "mystery" is explained on page 117. "The frightened, drink-sodden — prostitute named Lizzie

Williams" had only been found soliciting and was promptly discharged.

869 Page 104 (b)
Column II
Par. 4

Millard tells of the mysteriously smashed lock on the door to box 8, but explains it a few lines farther down. The door had been kicked in by an employe of the theatre, who had mislaid the key.

Page 107 (c)
Column I
Par. 3

Booth looked around for . . . confederates — But what he got was a prize collection of dull-witted, fumbling, frightened inepts . . . (This is the mystery — how could he have succeeded in spite of this crew?) But Millard voluntarily explains the mystery:

Page 107—
Column I
Pars. 5, 6, 7,
8, 9

Herold "knew the back trail". John Surratt was young, alert . . . and familiar with the back' roads . . . Atzerodt owned a boat with which he ferried spies . . . across to the Confederate Shore . . . Lewis T. Powell . . . a little giant with terrific strength . . . to subdue the . . . still muscular Lincoln.

Page 108—(d)
Column I
Last 2 lines

Who was Parker? No one knows. (Then Millard answers in two-thirds of a column what "no one knows.")

Page 109—(e)
Column I
Par. 2

Where was Charles Forbes, Lincoln's valet? (Millard clears up the mystery at once. "Twenty seven years later — Forbes said he — was in the box when the assassin fired his fatal shot."

Page 109 (f)
Column I
Par. 4

But was he?

(This is mystery #2 about Forbes, and Millard dissipates it shortly. The journalist Hanscom reports, "There was no guard at the door . . . except Charles Forbes . . .)

870 Page 118—(g)
Column II
last 4 Pars.

(Here is a real mystery, and Millard offers an explanation for no apparent reason:) "But the . . . baffling conversation continued . . . each side oddly careful not to identify itself . . . There is one shockingly obvious answer to the whole crazy conversation, an answer that seems to have been overlooked by students." Here is the answer; given immediately: "Of course Booth knew these were Federal troops. What he was actually trying to discover was whether or not they were a picked squad, sent *to help him escape.*"

(85) Dr. Samuels testified that, while Millard tries to accentuate the mysteries, rather than explain them, Eisenschiml explains or attempts to explain them. In fact, plaintiff often leaves questions unanswered, mysteries un-

resolved, as in the following 41 examples (the page references being to Why Was Lincoln Murdered?)

(a) Page 14, end of top paragraph.

How then did a man of . . . Parker's character find his way into their select company? The answer to this query is as mystifying as the query itself.

(b) Page 14, bottom line.

What prompted the wife of the President to make this unusual request in behalf of . . . Parker will probably remain a moot question.

(c) Page 16, Paragraph 4 after break.

The minutes of this trial (of Parker) . . . would make one of the most interesting chapters in the story 871 of Lincoln's assassination.

(d) Page 18, Line 12

. . . It has remained one of the unexplained mysteries of those eventful days.

(e) Page 19, Last paragraph.

Curiously, no contemporary historian or journalist found it of interest to throw any light on . . . Parker and the part he played.

(f) Page 20, Center

Whose card was it that Booth handed to Parker? Was it that of some senator or other dignitary . . . ? Or did Booth have enough bravado to produce a card of his own? And what became of it? Did Parker keep it or not? Was there any writing on this . . . pasteboard? Did Booth speak to the guard, and if so, what did he say? These and other equally pertinent questions have never been answered.

(g) Page 28, last paragraph and par. 2, p. 29.

One cannot help wondering why Hanscom . . . was . . . so slow in furnishing an . . . account . . . who requested Hanscom to act as messenger? What be-

came of the letter? What could have been the contents of this document . . . ? . . . There is no answer to all this.

(h) Page 34, line 3 and next two paragraphs.
What can it mean that Stanton . . . testified under oath that Lincoln did not visit the War Department at all after April 13 . . . ? But William Crook . . . is . . . positive . . . in his assertion that he accompanied the President to the War Department (on) April 14. Which one of these two accounts is one to believe?

872 (i) Page 43, paragraph 2, from bottom
Neither Seward nor Hanscom nor anyone else ever found it expedient to disclose what information they possessed. The reason for this secretiveness is another matter left to the whims of speculation.

(j) Page 55, line 9 and last paragraph.
. . . Why Grant's sudden change of plans? . . . Grant was a queer mixture of human traits, and those who ascribe his sudden turn-about to his extreme modesty are . . . on debatable ground.

(k) Page 65, line 8.
It is difficult to understand why the first dispatch was not written out until 1:30 A.M.

(l) Page 66, line 5.
What is still stranger and more difficult to explain . . . is . . . that it failed to mention Booth's name.

(m) Page 72, last paragraph.
Here the unbiased observer must pause to catch his breath . . . Who can follow this reporter . . . that the name of the assassin could not aid in his capture . . ?

(n) Page 73, line 3.
The actions of L. A. Gobright, agent of the Associated Press, add to the strangeness of the situation.

(o) Page 75, paragraph before break.
The correct interpretation of this wire would make fascinating reading.

(p) Page 78, line 1 after break.
A bizzare incident on the night of April 14 was an interruption of all telegraph communications . . .

873 (q) Page 80, line 5.
. . . No investigation was ever made.

(r) Page 91, paragraph 2.
For unfathomable reasons it was deemed advisable to arouse first the northern and northwestern environs of the Capital.

(s) Page 105, after break.
Did the War Department really make possible Booth's flight by ignoring the Port Tobacco Road?

(t) Page 109, line 5.
How was it that not a single detective . . . thought it worth while to approach the Anacostia bridge . . . ?

(u) Page 111, line 17 from bottom.
But what — or who — caused him (Fletcher) to insert all those misleading statements into his testimony . . . ?

(v) Page 114, last line.
There is no explanation for General Augur's odd conduct.

(w) Page 128, last 2 lines.
It is significant that of all the telegrams pertaining to this matter, this one in particular is not on file in the War Department.

(x) Page 129, last paragraph.
Stanton's part in the matter is not so clear. Did he give due consideration to the fact that O'Beirne was already within striking distance of Booth . . . ?

(y) Page 132, first 3 lines.
How it was possible for these two strangers, one of them crippled, to escape . . . is an enigma.

(z) Page 134, after break.

A great deal of mystery surrounds the expeditions that finally overtook the fugitives at Garrett's farm.

874 (aa) Page 135, paragraph 1.

If Baker . . . did not get this clue from Major O'Beirne, from whom did he get it? The mystery is intensified, rather than penetrated by Baker's lawyer.

(bb) Page 138, paragraph 4.

No one knows just what the assassin meant by these words—

(cc) Page 144, before the break.

It is impossible to glean the truth from the contradictory statements of two such men.

(dd) Page 151, last paragraph.

Baker died on July 3, 1868 — According to — the Philadelphia Press — he died, "although he had been ill for several months the disease that proved fatal was . . . typhoid fever." His death certificate, however, . . . states that he died of meningitis.

(ee) Page 153, last paragraph and p. 154, line 5.

Tradition has it that the killing was done by Boston Corbett . . . No other soldier has ever came forward to say that he witnessed (it).

(ff) Page 155, after break.

Was it Colonel Conger who killed the cripple visitor. . . . ?

(gg) Page 157, paragraph 4.

Baker also could have been suspected . . .

(hh) Page 161 end.

Who was shot at Garrett's farm . . . ? No attempt to answer this query will be made within the confines of this book.

(ii) Page 174, end.

The grave question of who instigated Lincoln's assassination may hinge on the genuineness of the attempts on the lives of Grant, Stanton and Johnson.

875 (jj) Page 182, paragraph 4.

"At that time" wrote Captain W. R. Prentice . . . I am certain that some one played a practical joke on General Baker, the Secretary of War and General Sheridan". One wonders.

(kk) Page 209, line 3.

Was there some other secret information in the hands of the authorities about an assassination plot . . . ? If so, the facts have never been paid bare.

(ll) Page 286, center.

It is not known what means the agents . . . used with Wiechmann and Lloyd . . .

(mm) Page 434, line 1 after break.

The story of Stanton, as presented in the foregoing paragraphs is . . . of necessity strongly interwoven with presumed motives . . .

(nn) Page 437, first line.

From the records submitted in this volume, the story of Lincoln's assassination emerges in a state of confusion.

(oo) Page 462.

The whole chapter "The Mystery of Booth's Note to Johnson," is presented as a mystery without an acceptable solution.

(86) Dr. Samuels testified that the alleged borrowed material in the Millard article would not exceed some 5000 words (pp. 2479, 2480). This would make the
876 borrowings, according to him, between 20 and 25% of the total article.

(87) Plaintiff's counsel made an offer to prove, through Dr. Samuels, that Dr. Samuels believes a writer has the right to appropriate the research of another (p. 2305). Dr. Samuels testified that he would regard the Millard article as original even if Millard copied all 66 Quotes from Eisenschiml. (transcript p. 2026).

(88) Dr. Samuels testified that there were similarities of language but not identities in connection with Quotes 10 and 4 (Samuels testimony, transcript pp. 2323, 2324, 2022, 2023); that several times he recalled "collocations where you had, say 15 or 20 words, a sentence, in exactly the same expression, exactly the same order" (transcript p. 2325); that Millard probably took the final sentence in Quote 35 from Eisenschiml (Transcript pp. 2327, 2328, 2330); that he used Eisenschiml for other portions of his article (transcript pp. 2331, 2332); that it is probable that the historical information or source of it, in connection with Quote 7, was borrowed from Eisenschiml (p. 2347); that Quote 11 could be derived from Eisenschiml, including similarities of some of the language (pp. 2353-54-55); that as to Quote 17, there is a similarity of data, language and style (pp. 2381, 2382, 2383, 2385); that as to Quote 23, Millard got his data from Eisenschiml, based his story on this material, and that he got some of his language from Eisenschiml (pp. 2398, 2399, 2400); that he does not know anything in the Millard article that is not derived from Eisenschiml (p. 2407); that as to Quote 26, the similarity of language suggests that Millard had access to Eisenschiml (p. 2411); that as to Quote 27, as well as other quotes, Millard was in-
877 debted to Eisenschiml for his factual material (pp. 2418-2419); that as to Quote 29 there is a similarity of thought and "one could be a paraphrase of the other," a probable inference being that Millard got it from Eisenschiml (pp. 2427, 2428); that Quotes 34 and 34A are among Eisenschiml's contributions to knowledge (p. 2434); that as to Quote 37, the source would be Eisenschiml (p. 2437)—"that would either be an imitation of language or because the material was similar" (p. 2438); that it would be a fair inference that Millard used Eisenschiml as the source for the two quotations (p. 2439); that

there is some similarity or identity of phrasing in Quote 40 (p. 2440); that the source of Quotes 47 and 48 is Eisenschiml (pp. 2443-2445); that one of the important historical sources to which Millard is generally indebted is Eisenschiml (p. 2450); that "the language (in Quote 49) is closely similar," and it is a fair inference that Millard took the language from Eisenschiml (p. 2451); that as to Quote 64, presumably the historical fact is taken from Shadow (p. 2001); that Bryan's Great American Myth says nothing with respect to a police blotter (Quote 24 and sub-paragraph 19 of Plaintiff's Affidavit) (p. 2203); that Crook's Through Five Administrations is not a source for Quotes 13, 14 and 15 (p. 2207); that since there is no reference in Bryan to anyone named Burns, Millard could not have derived his material about Burns from Bryan (p. 2298); that since Millard is an unpublished portion of his article referred to Eisenschiml in connection with a particular passage, it is a reasonable possibility that he took other things from Eisenschiml (pp. 2302, 2303); that Parker is one of the important figures in the Lincoln assassination story (pp. 2055, 2063); and that some of this material helps make the Millard article more interesting (p. 2064); that the Parker 878 story may well have been drawn from Eisenschiml (p. 2149); that Millard is indebted to Eisenschiml for most, if not all, of the factual details on Parker (p. 2177); that some of Millard's research was done using Eisenschiml's works (p. 2083); that there were some similarities of ideas, of factual detail, so that it would appear that Eisenschiml's work had been used as a literary and historical source (p. 2084); that there are similar details in Millard and Eisenschiml which are included in the sixty-six quotes (pp. 2106, 2107); that there are similarities set forth in most of the subparagraphs 19 and 20 of Plaintiff's Affidavit (pp. 2116, 2115); that there are

similar words and data in Quote 13 (p. 2165, 2167); that it is unlikely that Millard went to the Whig Press for the information in Quote 3 (pp. 2180 to 2183); that he would regard it as significant that Millard quotes only the same instances of premature publication and reports as Eisenschiml in Quotes 1, 2 and 3 (p. 2016).

(89) The following is a comparison of Millard's treatment of Lincoln with Eisenschiml's:

MILLARD	EISENSCHIML
(a) Page 36, column I, line 16.	Why? Page 40, line 5.
He (Lincoln) had had a dream — I heard subdued sobs. . . . I arrived at the East Room. . . . Before me was a catafalque. . . . "Who is dead in the White House?" I demanded. . . . "The President," . . . "He was killed by an assassin."	Only a few days prior to his death he (Lincoln) had told . . . of a pitiful dream he had had, in which he saw himself on a bier in the East Room of the White House, the victim of an assassin.
(b) Page 105, column I, line 15.	Why? Page 3, line 5.
At 11 o'clock that morning Lincoln went to a cabinet meeting. . . . He met General Grant. . . .	In the forenoon a regular meeting of the Cabinet was held, at which General Grant was present . . .
(c) Page 105, column I, par. 2 after break	Why? Page 3, last 2 lines.
He (Lincoln . . . told them of a dream . . . that had oc- 879 curred several times . . . each of its previous occurrences had been followed by some important event. . . .	He (Lincoln) then told of a dream that . . . had so often in the past presaged a portent or happening.
(d) Page 106, column I, par. 3.	Why? Page 43, line 7 from bottom.

MILLARD	EISENSCHIML
. . . Lincoln called Crook, the guard, to walk with him to the War Department. . . . "Crook, do you know, I believe there are men who want to take my life . . . and I have no doubt they will do it. Other men have been assassinated. . . . I have perfect confidence in those who are around me. . . . I know no one could do it and escape alive. But if it is to be done, it is impossible to prevent it."	Crook, one of the President's body-guards, wrote . . . that when he accompanied Lincoln to the War Department . . . the Chief Executive turned to him and said, "Crook, do you know, I believe there are men who want to take my life." . . . And I have no doubt they will do it. . . . Other men have been assassinated. . . . I have perfect confidence in those who are around me. . . . I know no one could do it and escape alive. But if it is to be done, it is impossible to prevent it."
(e) Page 106, column I, par. 6.	Why? Page 33, line 6.
Lincoln went on into the War Department. . . . He asked for a bodyguard. "Stanton," he said, "did you know Major Eckert can break a poker over his arm? . . . I am thinking . . . he would be the kind of man to go with me this evening. May I take him?"	. . . the President paid one of his usual visits to the War Department . . . he asked Stanton to let him have . . . Major Thomas T. Eckert as escort. . . . "I have seen Eckert . . . break fire pokers . . . over his arm . . . and I am thinking he would be the kind of man to go with me this evening. May I take him?" . . .
Stanton flatly refused. . . . Lincoln strode into the cipher room, putting his half-joking, half-pleading request directly to Eckert.	Stanton refused point blank. . . . Lincoln went into the cipher room, and . . . repeated his request . . . Eckert also . . . refused . . . "I

MILLARD	EISENSCHIML
And Major Eckert declined. Lincoln . . . turned away. "Then I shall take Major Rathbone along. . . . But I would much rather have you, Major, since I know you can break a poker over your arm."	shall take Major Rathbone along," he (Lincoln) said . . . "but I should much rather have you, Major, since I know you can break a poker over your arm."
(f) Page 105, column II, par. 2 after break.	Shadow, Page 5, par. 3, line 12.
He (Lincoln) complained that a military escort . . . made so much noise . . . that he could neither talk . . . nor hear himself think.	The burden of his (Lincoln's) complaint was that he and Mrs. Lincoln would not hear themselves talk for the clatter . . .
880	
MILLARD, Page 111, Col. 2, par. 4.	EISENSCHIML, Shadow, p. 351, line 1, p. 353, last line before break.
(g) The world knows when Lincoln died, but oddly no one knows the time when he was shot. . . . The time usually accepted is 10:13. . . .	It is known to a second when Lincoln died . . . No one, however, has recorded the exact time when Lincoln was shot. . . . It is therefore safe to say that Booth fired his shot at or close to 13 minutes past 10 P.M.

(90) The following is a comparison of Millard's treatment of General and Mrs. Grant with Eisenschiml's:

MILLARD	EISENSCHIML
(a) Page 37, column I, 2nd par. from bottom.	Why? Page 54, beginning.
It was Lincoln himself who had suggested that Grant and his wife be included in	The President and Mrs. Lincoln had invited Mr. and Mrs. Grant to be their guests

MILLARD	EISENSCHIML
the theater party. The invitation had been sent and accepted.	at Ford's Theater on Friday night, and the General had accepted the invitation.
(b) Page 105, column II, par. 4.	Why? Page 61, line 10.
His voice . . . was almost pleading. The general shook his head firmly. . . .he hurried off, leaving the chief . . . to stare after him with an expression of deep hurt. . . .	Lincoln felt the affront keenly. He hinted at it rather strongly as Grant took his leave. But apparently his plea fell on deaf ears.
(c) Page 105, par. 6, Col. II.	Why? Page 56, line 1.
In his memoirs, Grant skillfully slid over the incident with the excuse of much work to be done and an overwhelming desire to see his children.	In his memoirs, Grant passed over this episode quickly and skillfully . . . if able to finish his work early, his intention was to join his children. . . .
(d) Page 105, par. 6.	Why? Page 57, last par.
As to work, he did almost nothing during his brief stay in Washington.	What about Grant's work . . .? his activity consisted of sending a single telegram to General Meade. . . .
(e) Page 105, par. 6.	Why? Page 56, line 5.
In those same memoirs he forgot himself to the extent of remarking that by the 13th his work was practically finished.	Grant himself admitted as much when he wrote that by the 14th "I was pretty well through with this work."
	Why? Page 58, line 3.
	. . . his work was . . . practically finished.
881	
(f) Page 105, Col. II, par. 7.	Why? Page 56, par. 2.
What of his very natural yearning to rejoin children.	Can one really believe that Grant's longing for his chil-

MILLARD	EISENSCHIML
so long separated from their father? . . . But Grant had just returned from City Point, not too far from Burlington.	dren was so irresistible? . . . Burlington was only a . . . short distance from City Point.
(g) Page 105, column II, par. 8.	Page 56, par. 2, line 7.
And that 6 o'clock train he took! It was a Camden and Amboy local, requiring two wearisome changes during the night. . . . He could have gone to the theater, taken an early-morning express and reached Burlington in comfort at 2:58 in the afternoon.	. . . the evening train which the Grants took from Washington at six PM was not due in Burlington until early in the morning. All that they stood to gain by suffering the discomforts of a night train . . . and making two transfers at very inconvenient hours, was that they would see their children in the afternoon. (A following time-table shows the arrival time at 2:58 P.M.)
	Page 57, par. 1.
More likely the War Department would have supplied the General with a special train. . . .	. . . or even a special train might have been allotted to him. . . .
(h) Page 105, column II, after break.	Page 57, par. 2, line 7.
Apologists blame Mary Lincoln. . . . Twice the sensitive Julia had been publicly humiliated by Mrs. Lincoln's outbursts of shrieking jealousy. The prospects of risking another crazy tantrum in	. . . His wife was still to be reckoned with . . . Mrs. Grant was a woman of . . . refinement . . . she must have had very sound reasons for her actions.
	Page 58, par. 2, after break.

MILLARD	EISENSCHIML
a crowded theater could have offered no pleasure to Grant's wife. But the day has not yet come when an Army	It so happened that a few weeks previously Mrs. Grant had been hostess to Mrs. Lincoln . . . (who) flew into a rage . . . and could be pacified . . . with difficulty. Page 59, line 7. . . . it is no wonder that Mrs. Grant did not enjoy the prospects of an evening in the same loge with the Lincolns, . . . but this by no means settled the matter for her husband . . . what was merely a social affair for his wife took on the character of an official function for him.

882

(91) The following is a comparison of Miliard's treatment of Booth with Eisenschiml's:

MILLARD	EISENSCHIML
(a) Page 107, column I, par. 2	Shadow, Page 8, par 2, line 7.
Booth's original plot (to kidnap the President) against Lincoln was fantastic but not necessarily unworkable . . . Here was an accepted . . . strategy of war . . . From a legal standpoint, it was not a crime.	To many, the abduction of a President . . . may have seemed preposterous. Shadow, Page 16, last line. A successful abduction . . . would not have been contrary to the laws of civilized warfare.

MILLARD	EISENSCHIML
(b) Page 107, column I, par. 3 ff	Shadow, Page 9, last par.
Booth looked around for confederates. Samuel Arnold and Michael O'Laughlin were former Maryland school-mates. David Herold ... loved to hunt and knew the back trails and rabbit runs of the country below Washington.	Samuel Arnold and Michael O'Laughlin were trusted school-mates of Booth . . . Herold . . . had spent many a day hunting among the cross-roads of the Potomac country and knew strange hiding places.
(c) Page 107, column I, par. 2 prior to break	Shadow, Page 9, last par.
... John Surratt ... carried many dispatches between Washington and Richmond ... (and) was familiar with the backroads through the Virginia wilderness.	John Surratt . . . had an intimate knowledge of southern Maryland, where he had often traveled as a Confederate dispatch bearer.
(d) Page 105, par. after break	Atzerodt owned a boat . . . and was well versed in illicit traffic.
. . . Atzerodt owned a boat with which he ferried spies, smugglers and couriers across. ...	
Powell was ... a giant with the strength to subdue the huge and still-muscular Lincoln.	Lewis Paine (Powell) . . . with his gigantic strength, was to have subdued the powerful Lincoln.
(e) Page 113, column I, par. 1	Why? Page 96, line 7
If he (Booth) could cross ... the Potomac ... he would be on the open road to ... Port Tobacco and the possible safety of the South. It	Only one hole was left . . . This was the road that pointed straight south from Washington to Port Tobacco. It was the road Booth

MILLARD	EISENSCHIML
was the one easy, direct and wholly logical escape route ...	was most likely to use, for it led toward the Confederacy, the only place where the assassin could hope to find protection.
883	
(f) Page 113, column I, par. 1	Why? P. 107, par. 2.
Booth rode boldly and calmly up to that sentry post and was challenged by the sergeant of the guard, Silas T. Cobb.	A Sergeant Cobb, who was in charge at the ... bridge, had questioned Booth, and after a brief conversation, had let him pass.
(g) Page 113, column I, par. 5.	Why? Page 97, line 1.
So ... Booth was swallowed up by the darkness of the night.	When Lincoln's assassin had been swallowed up by the darkness of the night ...
(h) Page 116, column I, line 1.	Why? Page 97, last par.
There was no wild, panting flight ... for the fugitives ... the two were riding openly along one of the best known unofficial highways—the advertised route of spies and couriers between Washington and Richmond.	The only likely route for Booth to take was the one he actually followed. It was what was then known as the underground railway to Richmond, and was traveled by spies and dispatch-bearers. ...
(i) Page 116, column I, after break	Why? Page 171, center.
... Booth was supposed to have shouted back to Lloyd, "I am pretty certain that we have assassinated the President and Secretary Sew-	... Lloyd ... quoted one of them (the assassin) as saying, "I am pretty certain that we have assassinated the President and Secretary

MILLARD	EISENSCHIML
ard." ... By not mentioning any other Cabinet member, he implied that no plot against any others existed.	Seward." Not one word about Johnson. If the latter's death had been included . . . how could they be so sure . . . that Johnson was unharmed?
(j) Page 116, column II, par. prior to break Herold explaining that they were headed toward Washington. ... They were riding south, Herold admitted, but only to reach the Potomac in the hope of finding a boat headed north.	Why? Page 258, center. Herold tried to (explain) that they were on the way to Washington, . . . they were headed south. The fugitives were in a hurry to reach the Potomac, going south, Herold claimed, that they might find a boat to take them back north. . . .

(The fugitives are finally cornered in Garrett's barn.)

884

(k) Page 118, column II, pars. 4&5 The accepted story (is) that the one door of the barn was padlocked ... It is significant, then, to discover that double doors were on all 4 sides ... The authority for that is Wm. Garrett, and his brother added the information that 'there were doors that fastened on the inside.'	Shadow, Page 70, last par. & page 71, top. According to this testimony there was only one door . . . The Rev. Richard B. Garrett . . . states that double doors were on all 4 sides . . . Wm. H. Garrett . . . confirms . . . there were doors that fastened on the inside.
Par. 6 — Two years afterward Lieutenant Baker ...	Page 71—Lieutenant Luther B. Baker (said) 'Only one

MILLARD	EISENSCHIML
said, 'Only one door of the barn was opened ...'	door of the barn was opened.'
(l) Page 119, column I, par. 2 after break	Shadow, Page 55, line 8 from bottom.
They brought the dying man out and laid him on the Garrett porch. He opened his eyes, murmuring, "kill me, oh kill me!" Baker answered, "No Booth," "When I said 'Booth', Baker testified afterward, 'he seemed surprised, opened his eyes, and looked about.' Would a dying man be surprised at hearing his own name spoken?	When Baker described how the dying man had been ... laid on the porch of the Garrett home, he made a startling remark, "He opened his eyes," Baker swore, "and seemed to realize what was going on. The first words he uttered were 'Kill me, oh, kill me!' I said, 'No Booth.' *When I said 'Booth'*, he seemed *surprised* ... What can be the meaning of this? A dying man hears his name mentioned ... and acts surprised.
(m) Page 119, column II, after break	Shadow, Page 73, bottom.
Lafayette Baker, grinning harshly would soon be remarking to a friend, "I intended to have his body, dead or alive, *or a mighty good substitute for it.*"	He (Lafayette Baker) smiled, and said ... "*I intended to have his body, dead or alive, or a mighty good substitute* for it. ..."
(n) Page 119, column II, lines 3, 4	Page 157, center.
It is interesting to note that when the rewards were finally paid, Luther Baker got $3000.00. And Lt. Col. Everton J. Conger got $15,000!	It is interesting to note that Conger received the lion's share of the final reward paid out — $15,000 — while Lt. Baker was given only $3000.00.

(92) The following is a comparison of Millard's treatment of John F. Parker with Eisenschiml's:

885

MILLARD	EISENSCHIML
(a) Page 108, column I, bottom	Why? Page 14, end of par. 1.
Who was Parker? How did he get a post of such responsibility?	How then, did a man of John F. Parker's character find his way into this select company?
(b) Page 108, column I, top	Why? Page 11, last line.
Parker was, that night, a month short of 35. Born in Frederick County, Virginia, he had been a carpenter around Washington, had served three months with the Union Army in 1861, and had then joined the Metropolitan Police Force. He lived at 750 L Street with a wife and three children.	Parker was born on May 19, 1830, in Frederick County, Virginia. He later became a carpenter in the city of Washington, and enlisted in the army shortly after the outbreak of the war. When the Metropolitan Police Force was organized in September, 1861, he became one of its first patrolmen. At that time he was married, had three children, and lived at 750 L Street.
(c) This John Parker was something less than a model patrolman.	His record as a police officer is not one that inspires great confidence.
(d) On October 14, 1862, he was on trial before the Police Board for using profane, coarse, and insolent language ...	About a year after joining the Force, he was charged ... with the use of violent, coarse and insolent language.

MILLARD	EISENSCHIML
(e) to a grocer who tired of running a rest room for lazy police	The owner of a grocery store had complained that officers were . . . loafing in front of his establishment.
(f) He was also accused of violent and disrespectful language to superior officer who investigated.	"The language he used," says the report (of the Police Board) "was exceedingly violent and disrespectful . . ."
(g) For these Parker was "punished" by a reprimand and transfer to another precinct.	. . . he was reprimanded and transferred to another precinct.
(h) . . . a few days later, . . . he was found asleep on a street car instead of walking his beat, and freed on the ingenious defense that he had gone aboard to in- 886 vestigate the squawking of ducks.	. . . a fortnight later, he was accused of being found asleep on a street car when he should have been walking his rounds; but the charges were dismissed upon Mr. Parker's statement that he . . . had heard the squawking of ducks and . . . had entered the car to ascertain the cause.
(i) In April 1863, we find Parker on trial again, this time charged with being drunk and disorderly in a house of ill fame operated by one Annie Wilson, and with having fired his pistol	Why? Page 12, par. 2. On March 16, 1863, Parker again found himself before the Police Board. . . . This time he was accused . . . of having visited a house of prostitution, kept by a Miss

MILLARD	EISENSCHIML
through a window of that establishment. In his defense Parker paraded ... a crew of her girls as witnesses. They all testified warmly to the good character of John Parker, one girl going so far as to cry indignantly that John had been staying at the bawdy house for five weeks and had never once been seen drunk.	Annie Wilson . . . and that he had fired a pistol through the window. . . . The witnesses, employees of the house in question, proved staunch champions for the defendant, one of them going so far as to declare that he had never in his life seen Parker drunk, "and he had been in that house for five weeks."
(j) His (Parker's) name appeared (on the records) ... when he was examined by a police doctor after being kicked by a man he was trying to arrest.	Why? Page 13, 2nd par. from bottom. ... Parker received a severe kick from a man he was endeavoring to arrest, and therefore the incident is ... in the records ...
(k) On April 3, 1865, ... Mrs. Lincoln wrote a note on White House stationery to Provost Marshall James R. O'Beirne: This is to certify that John F. Parker, a member of the Metropolitan Police has been detailed for duty at the Executive Mansion by order of Mrs. Lincoln.	In a letter written by her (Mrs. Lincoln) to James R. O'Beirne, provost marshal, she asked: This is to certify that John F. Parker, a member of the Metropolitan Police has been detailed for duty at the Executive Mansion by order of Mrs. Lincoln.
(l) Page 117, column I, top John Parker had vanished after the assassination. Where he went or what he	Why? Page 17, par. 1, after top. What Parker did immediately after the assassination has not been definitely ascer-

MILLARD	EISENSCHIML
did to soothe his guilt-ridden soul that night, nobody knows. But at 6 o'clock Saturday morning he stumbled into Police Headquarters towing a suspect — ... a prostitute named Lizzie Williams ... Lizzie was promptly discharged.	tained. The police blotter ... shows that at 6 AM ... Parker brought to headquarters a woman by the name of Lizzie Williams ... One can visualize the ... patrolman ... roaming the streets ... as an atonement ... Parker brought in a woman of the streets who ... was promptly discharged.

887

(93) The following is a comparison of Millard's treatment of O'Beirne with Eisenschiml's:

MILLARD	EISENSCHIML
(a) Page 116, column II, par. 8 after break	Why? Page 119, last par.
These four (detectives of O'Beirne) were certain the strangers had been Booth and Herald, but by keeping quiet they hoped to make the capture themselves ...	(Statement by the leader of the four O'Beirne detectives) I was under the impression that Booth and Herold were in the neighborhood and ... we would get the whole of them ...
(b) Page 117, column II, line 6	Why? Page 123, line 1.
Major James O'Beirne ... had been scouting ... when he picked up a clue ... It was a false trail, but in following it, O'Beirne ... stumbled onto the real trail ... and came within a hairbreath of capturing them.	O'Beirne, following the wrong men, stumbled on the track of the assassins by accident, and had he held to it ... would probably have captured them.

MILLARD	EISENSCHIML
(c) Page 117, column II, par. 3 after break	Why? Page 120, par. 3.
... O'Beirne was writing in his journal, "Sam'l Cox. His mill servant states to another colored man that Cox had been cooking provisions lately, and carrying them to persons down in the swamp. ..." That close, O'Beirne came to making his capture.	In a diary which (O'Beirne) kept . . . there is an entry . . . ! "Sam(ue)l Cox. . . . His mill servant states to another colored man that Cox had been cooking provisions lately and carrying them down in the swamp . . ." That close O'Beirne came to getting his man.
(d) Page 118, column I, par. 3 prior to break.	Why? Page 122, last par.
Captain Beckwith, Grant's chief telegraph operator, ... had been sent to Port Tobacco ... to open a telegraph station. O'Beirne made the error of telling Beckwith what he had found out so far. The ... operator promptly cut into the Washington line and flashed the whole story to Stanton. Back came a prompt and, to O'Beirne, bewildering reward for his zeal — a flat order from Stanton to remain on the Maryland side ...	When Major O'Beirne fell in with Captain Beckwith at Port Tobacco, he gave Grant's telegraph operator a survey of his achievements. . . . This officer . . . cut into the telegraph lines . . . to Washington and gave to the War Department the gist of the information. . . . One can imagine his (O'Beirne's) surprise . . . when orders came over the wire to . . . remain on the Maryland side . . .

888

(94) The following is a comparison of Millard's treatment of Miss Harris and Major Rathbone with Eisenschiml's:

MILLARD	EISENSCHIML
(a) Page 108, column II, par. 5 from bottom	Why? Page 22, par. 1.
The carriage made one stop, at the home of Senator Ira Harris of New York.	The presidential carriage left the White House. . . . Ten minutes later, it arrived at the residence of Senator Harris.
(b) Page 110, column, I, par. prior to break	Why? Page 25, par. 5.
Later that night Clara Harris gave her sworn statement. "Nearly one hour before the commission of the deed the assassin came to the door of the box, and looked into take a survey of the position of the occupants. It was supposed at that time that it was either a mistake or the exercise of an impertinent curiosity. The circumstance attracted no particular attention at the time. Upon his entering the box again, Major Rathbone arose and asked the intruder his business. He rushed past the Major without making a reply, and fired . . ."	In a statement made (by Miss Harris) . . . she reported that, "Nearly one hour before the commission of the deed the assassin came to the door of the box, and looked in to take a survey of the position of its occupants. It was supposed at the time that it was either a mistake or the exercise of an impertinent curiosity. The circumstance attracted no particular attention at the time. Upon his entering the box again Major Rathbone arose and asked the intruder his business. He rushed past the Major without making a reply, and . . . fired . . ."

MILLARD EISENSCHIML

NOTE: In the original article in the New York Herald the last sentence reads like this:

"He rushed past the Major without making a reply, and *placing his pistol close to the back of the President's head, actually in contact with it,* fired, *and instantly sprang upon the cusioned baluster of the box* . . ." (Italics supplied.)

Millard omitted the same italicized portions from his account as Eisenschiml, and broke off at the same spot Eisenschiml did.

(c) Page 110, column I, after break

The statement should have aroused feverish interest, but it didn't, for the simple reason that Clara Harris made another statement a couple of days later and *left that part completely out* . . . was she quietly gagged?

Why? Page 26, line 6

What makes Miss Harris' statement . . . doubly remarkable, is that it differs so radically from (her) sworn statement . . . two days later. Then she made no mention of the . . . visitor. . . . She must have forgotten the man . . . completely . . . or was it something other than forgetfulness . . . ? . . . Miss Harris probably was easily influenced . . .

889

MILLARD EISENSCHIML

(d) Page 120, column II, par. II after break

Shadow, Page 395, note 34.

Major Rathbone . . . recovered physically, but not mentally. He married Clara Harris . . . and she bore him

Rathbone's mind had probably been affected by the murder . . . (he) married Miss Clara Harris . . . there

MILLARD	EISENSCHIML
children ... A few years later he too went mad and murdered his wife. His efforts to kill the children were thwarted and he ended his miserable days under restraint as a violent maniac.	was a daughter . . . and two boys. On the night of December 23, 1883 . . . Rathbone suddenly attacked and killed his wife . . . and tried to enter the children's bedroom . . . Rathbone was taken to the hospital for the criminally insane, . . . where he lived until 1911.

(95) The following is a comparison of Millard's treatment of John Fletcher with Eisenschiml's:

MILLARD	EISENSCHIML
(a) Page 113, column II, par. 1 after break	Why? Page 107, par. 1
John Fletcher ... rented a roan mare to Herold ... with the express stipulation that it must be returned not later than 9 o'clock. ... When 9 o'clock passed . . . Fletcher went out ... saw his quarry riding ... Herold spurred around and raced off.	John Fletcher . . . had become suspicious of . . . Herold . . . who was riding a horse from the livery stable for which Fletcher worked, and had stayed out beyond the time . . . agreed upon . . . Fletcher happened to see his animal being spurred on . . .
(b) Page 114, column 1, par. 2 after break	Why? Page 110, line 3
"I then returned to the stable, put up the horse, came outside the office-window, and sat down there; it was half-past 1 o'clock."	"I then returned to the stable," swore Fletcher in court, "put up the horse, came outside the office window, and sat down there; it was half-past one o'clock."

MILLARD	EISENSCHIML
(c) Page 114, column I, par. 2 from bottom	Why? Page 110, par. 3
In the testimony that failed to reach print, Fletcher told how, seated in front of his stable, he heard passers-by talking of the assassination "and they were saying that it was men riding on horseback that had shot President Lincoln."	. . . the interesting part of his (Fletcher's) story begins where Pitman's report leaves off. Fletcher continued . . . by saying that he overheard people on the sidewalk saying "that it was men riding on horseback that had shot President Lincoln."
890	
(d) Page 114, column I, last par.	Why? Page 114, par. 1 after break
Fletcher ... told his story to a detective named Charley Stone. Stone immediately took him straight to the headquarters of General C. C. Auger ...	Fletcher then . . . went in company with a city detective named Stone to General Augur's headquarters.
(e) Page 114, column II, top	Why? Page 113, center
To Auger himself, Fletcher described Herold and his horse. He was shown a saddle and bridle recently picked up and at once identified it as the one rented by Atzerodt, but he could not ... think of Atzerodt's name. .... accompanied by the detective, Stone, he went back to the stable, got Atzerodt's name off a rental card, and took it back to Auger.	"General Auger asked me . . . I gave him the name of Herold, his description, . . . There was a saddle and bridle lying close to the desk . . . and that was Atzerodt's . . . He asked me did I know that man's name. I told him that I did not . . . but I had it at the office. He sent the detective, Stone with me . . . I . . . got his name right upon one of our cards . . . and gave it to the general."

MILLARD	EISENSCHIML
(f) Page 114, column II, after break . .	Why? Page 110, last 2 pars.
His (Fletcher's) testimony placed him near the Navy Yard bridge at ten minutes to 12 ... But on the blotter of the ... Police ... is a list of people who appeared that night ... According to that record, John Fletcher was at police headquarters ... between 11 o'clock and midnight.	According to (Fletcher's) testimony . . . he did not go to the police station until after one-thirty A.M., while the police records mark the time of his appearance at headquarters before midnight.

(96) During the trial of this cause, including the taking of the Millard deposition, defendant arranged three mass displays of its alleged evidence: (a) a large number of books and other printed matter, at first claimed to be sources used for the Millard article, and then minimized by Millard himself to not more than a dozen items, perhaps less (b) a series of alleged source cards, ultimately admitted as not necessarily listing the sources actually used by Millard in connection with his article; and (c) a long compilation of excerpts from alleged sources utilized by Millard, which turned out as not in point when the cross-examination of Dr. Samuels 891 was concluded. In addition, defendant introduced in evidence an array of books and magazine articles, having little, if anything, to do with the issues of the case. Plaintiff objected, and objects, to the said mass displays, the testimony in connection therewith, and the documents introduced in evidence.

(97) Plaintiff objected, and objects, to the introduction of certain documents into evidence in connection with the depositions of Joseph Millard and Ralph Daigh:

(a) Defendant's Exhibit 3 of March 25, 1954—the contract dated January 30, 1952, between Millard and Fawcett Publications, Inc. (for the reason, among others, that the contractual relations between the said two parties could have no relevancy with respect to the rights and obligations of the plaintiff and defendant with respect to each other).

(b) Defendant's Exhibit 7—the cards prepared by Millard for the purposes of his deposition (for the reason among others, that the cards are self-serving and admittedly the sources set forth in the cards are not the same as those consulted for the article itself).

(c) Plaintiff's Exhibit 5 of March 26, 1954. Letter from Eisenschiml to Millard dated July 26, 1946. (This letter being marked only for identification and not with the intent of having it received in evidence, as it has no tendency to prove any of the issues of this case).

(d) Plaintiff's Exhibit 6 of March 26, 1954.—Stranger's Pocket Companion. (This book being marked only for identification and not with the intent of having it received in evidence, as it has no tendency to prove any of the issues of the case).

892 (98) Plaintiff objected, and objects, to the introduction of certain other documents into evidence:

(a) Defendant's Exhibit 3—the contract dated January 30, 1952, between Millard and Faweett.

(b) Defendant's Exhibit 4—article by Millard, The Spy Who Saved The Country (for the reason, among others, that it had no tendency to prove any of the issues of this case).

(c) Defendant's Exhibit 8—the letter from Eisenschiml to Millard of July 26, 1946 (for the reason, among others, that it has no tendency to prove any of the issues of the case).

(d) Defendant's Exhibit 9—the sample notes of Millard.

(e) Defendant's Exhibit 10—the deposition of Ralph Daigh—certain portions thereof as enumerated on p. ..... of the transcript are objected to; the rest of the deposition was offered in behalf of the plaintiff.

(f) Defendant's Exhibit 12 — book called The Day Lincoln Was Shot, by Jim Bishop (for the reasons, among others, that this is a book that was published long after the present suit was started, and was the subject of another claim by plaintiff which has been settled amicably by the parties through a cash payment to plaintiff and other arrangements; and the book has no tendency to prove any of the issues of this case).

(g) Defendant's Exhibit 13 — Blue Book for February 1955 (for the reasons set forth in (f) hereinabove).

(h) Defendant's Exhibit 4 of May 16, 1955, the volume of alleged source material for the reasons, among others, that no foundation of any kind was laid therefor, the one witness—Dr. Samuels—questioned about it, disclaimed all responsibility therefor, and there is no evidence of the relevancy of any portion thereof).

893 (i) Defendant's Exhibits 1, 2 and 3 of May 27, 1955—three works of Eisenschiml (for the reason that they have no relevancy in proving any of the issues hereof).

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894 • • •

895 SPECIAL MASTER'S FINAL REPORT

REPORT OF JOSEPH A. GRABER, SPECIAL MASTER IN CHANCERY, WITH RESPECT TO THE OBJECTIONS FILED TO HIS REPORT BEARING DATE OF DECEMBER 27, 1955

(Filed Jan 20 1956)

I, Joseph A. Graber, Special Master in Chancery for the United States District Court for the Northern Dis-,

trict of Illinois, Eastern Division, do further report that on the 27th day of December, 1955, I prepared my Report in the above-entitled cause; that on the 28th day of December, 1955, I caused a copy of said Report to be served on all attorneys of record herein by the Clerk of the Court; that subsequently I fixed the 23d day of January, 1956, as the last day upon which to file objections to said Report, and the 23d day of January, 1956, as the time when arguments of counsel with respect to any and all objections would be heard.

The plaintiff, Otto Eisenschiml, filed on January 4, 1956, his objections numbered 1 to 16, both inclusive, to said Report and said objections have been filed with the Clerk of the Court.

896 On the 11th day of January 1956, I received a letter from counsel for the plaintiff rejecting an opportunity to argue plaintiff's objections. A copy of that letter together with the defendant's reply is attached hereto. Since the plaintiff does not wish to argue objections to my first Report, I have refused Defendant's offer to do so. Accordingly, without hearing any argument, I read plaintiff's objections and re-read and studied the entire record herein. After giving due and careful consideration and attention to each and all of said objections, I do further and finally report as follows:

First: That the fourth objection of the plaintiff is sustained and the fourth paragraph of page two of my prior Report is hereby amended to read as follows:

> "Included in the evidence submitted by me are the depositions of Joseph Millard, Mrs. Joseph Millard and Ralph Daigh. The depositions of Millard and Daigh were taken by the parties in New York City prior to the reference while the deposition of Mrs. Millard was taken upon written interrogatories and

cross-interrogatories in Sarasota, Florida, after the order of reference."

Second: That the ninth objection of the plaintiff is in part sustained and the next-to-last line of Paragraph 19 appearing on page 12 of my prior Report is amended to read as follows:

"As a result of this work Millard was asked to address the Civil War Round Table of Chicago, an organization of men interested in, and informed in varying degrees about, the American Civil War."

Third: That as to the fifth objection, I am familiar with the exhibits referred to therein as I examined the bulk of them during the hearing herein, and further I examined the appropriate portions of the transcript
897 of the record dealing with the subject-matter of most of said exhibits at the time I prepared my Report. Subsequent to receiving plaintiff's objections, however, and on January 6, 1956, I caused the Clerk of the Court to deliver to me all of the exhibits described in Objection No. 5 that were filed with the Clerk.

Plaintiff's Exhibit #4—

Photographs of Booth's escape route taken by plaintiff in April of 1933.

Plaintiff's Exhibit #15—

A copy of Joseph Millard's article, America's Greatest Unsolved Murder.

Plaintiff's Exhibit #20—

An analysis of Millard's article appearing in the February 1953 issue of True made by the plaintiff, Otto Eisenschiml, and bearing the heading, "Overall Plagiarism of Millard's story". The bulk of this document was read by plaintiff into the record.

Plaintiff's Exhibits #21, #22, #23—

Copyright certificates and appropriate assignments thereto which disclose the plaintiff has received from the appropriate Government agency copyright certificates for his two works.

Plaintiff's Exhibit #24—

A copy of a letter dated March 12, 1953, sent by plaintiff's attorney to one of defendant's offices.

Plaintiff's Exhibit #25—

A cover from the January 1954 issue of True magazine.

Plaintiff's Exhibits #27, #27A, #28, #29, #29A—

Copies of historical material in the possession of the plaintiff and apparently used in the preparation of plaintiff's books.

Plaintiff's Exhibits #30, #31—

Parallel analyses of portions of plaintiff's work and Millard's article.

Plaintiff's Exhibit #32—

An article dealing with the escape of Booth and written by a third person in 1946.

898 My prior Report is hereby amended to reflect the fact that I have now received, read and considered these exhibits and that none of said exhibits changes the conclusions and recommendations heretofore reached by me.

Fourth: That each and every one of said remaining objections filed herein by the plaintiff are without merit and are hereby overruled.

Respectfully Submitted this 20th day of January, A. D. 1956.

Joseph A. Graber
Special Master

899

Law Offices
ELMER GERTZ
January 10, 1956

Honorable Joseph A. Graber
Kirkland, Fleming, Green, Martin & Ellis

Gentlemen:

Re: Otto Eisenschiml
vs.
Fawcett Publications, Inc.
Civil Action No. 53 C 1912

I am writing this letter in order to avoid further misunderstanding and confusion.

When the Special Master's Report was prefaced by a notice that the Master had entered a rule upon all parties to file objections, if any, to the Report on or before January 23, 1956, at which time he would take up and hear arguments of counsel upon any objections, I rechecked the rules of civil procedure for the United States District Courts and the rules of our District Court, and I found that these were at variance with the procedure outlined by the Master. I have assumed that the rules are controlling. Accordingly, I have filed objections to the Report and a supporting Brief within the time and at the place prescribed by the rules; and when the defendant's Brief and my reply thereto are filed within the prescribed time, I shall serve notice, as provided by the rules, for the disposition of the objections and the Report by the court, and not by the Master. I am assuming, therefore, that there will be no hearing before the Master on January 23 in connection with objections on the Report, or for any purpose whatsoever. Incidentally, the notice of the Master does not provide a time and place for any such hearing before him.

900 Unless I hear from you, I shall assume that you are in agreement with what I state in this letter.

Respectfully yours,
(signed) Elmer Gertz

901 KIRKLAND, FLEMING, GREEN,
MARTIN & ELLIS
33 North LaSalle Street
Chicago 2

Washington Office
World Center Building

January 12, 1956

Honorable Joseph A. Graber
7012 South Shore Drive
Chicago, Illinois

Dear Judge Graber:

Re: Eisenschiml v. Fawcett Publications

We are in receipt of a letter from Elmer Gertz dated January 10, 1956.

We submit that the letter's disrespectful tone is only surpassed by the curious position counsel has taken therein. We do not believe that the Master's Report contains any errors whatsoever and will make no objection to it. We had, however, presumed upon receipt of the Master's Report, which included a notice of time for arguing objections, that he was acting pursuant to Rule 53 (5) permitting a draft report and had merely transmitted the Report to the Clerk of the Court for service. Manifestly, this procedure would be in accord with the usual Illinois State practice which permits the Master in the first instance to rectify any errors in his Report called to his attention by either party.

To our knowledge, counsel's refusal to appear before the Master and argue the merit of his objections is unprecedented. Normally, a party who is dissatisfied with a Master's Report seeks every opportunity to have his position and objections again heard.

We should also like to point out that even assuming Mr. Gertz be correct and that the filing of the Report terminates the Master's authority, Rule 53 (e) (2) provides that the Court "after hearing may adopt the report or may modify it or reject it in whole or in part or may receive further evidence or may recommit it with instructions." Patently, we believe that even if the Master had lost jurisdiction (which is not the case), if he were to subsequently call the Court's attention to errors in his Report the Court's labor might be materially shortened. Indeed, the Court, if the Master believed there might be inaccuracies in his Report, might very well recommit pursuant to Rule (e) (2) for further hearing.

902 We have read Mr. Gertz' objections and believe that all of them, like the remainder of his case, totally lack merit. We, however, recognize that he is entitled to his day in Court and would be happy to appear at any time the Master chooses to argue the objections. If Mr. Gertz persists in his refusal to argue his objections to the Master, we shall still, if the Master wishes, appear and argue that they are baseless. In the alternative, if the Master wishes, in light of Mr. Gertz' position, to consider plaintiff's objections without argument we have no objection to such a procedure.

Finally, we also note that Mr. Gertz complains about the lack of hour and place for hearing such objections. It is to be remembered that during the hearing and prior to the Master's decision this presented no barrier or problem to any of the parties. The setting of hearings

has always been done informally by telephone and at a time and place convenient to all.

Respectfully submitted,

/s/ J. B. Martineau
J. B. Martineau
/s/ Don H. Reuben
D. H. Reuben

f
Cc: Mr. Elmer Gertz

903 January 20, 1956

Mr. Elmer Gertz
221 North LaSalle St.
Chicago, Illinois
Kirkland, Fleming, Green,
Martin & Ellis
33 North LaSalle St.
Chicago, Illinois

53 C 1912
Otto Eisenschiml
vs.
Fawcett Publications, Inc.
A Delaware Corporation,

Gentlemen:

Pursuant to Rule 53(3)(1) of the Rules of Civil Procedure for District Courts of the United States, you are hereby notified that the Honorable Joseph A. Graber, Special Master, filed his report in the above entitled cause, a copy of which is enclosed.

Yours very truly,

.....
Clerk

....
By Deputy Clerk

904

NOTICE OF FILING OBJECTIONS TO THE SPECIAL MASTER'S FINAL REPORT AND RENEWING OBJECTIONS TO SPECIAL MASTER'S ORIGINAL REPORT

(Filed Jan 24 1956)

Pursuant to Rule 53 of the Rules of Civil Procedure for District Courts of the United States, you are hereby notified that the plaintiff, Otto Eisenschiml, is this day filing with the Clerk of this Court his objections to the "Final Report" of the Special Master (filed with the Clerk of this Court on January 20, 1956, and a copy of which was delivered to plaintiff's attorney on January 23, 1956), a copy of which objections is hereto attached and served upon you.

Please take further notice that the plaintiff incorporates by reference in the said objections his objections to the Special Master's original report and the matters and things filed therewith and his brief in support of his said objections (which brief was filed with the Clerk of this Court on January 9, 1956).

905 Please take further notice that the plaintiff renews his objections to the original report with the same force and effect as if such objections were refiled herewith in addition to having been filed on January 4, 1956.

Please take further notice that plaintiff will file, pursuant to the rules of this Court, his additional brief in support of his objections and will make application to the Court for action upon the reports and objections thereto.

January 24, 1956.

* * *

906

EXCEPTIONS OF PLAINTIFF TO SPECIAL MASTER'S FINAL REPORT
(Filed Jan 24 1956)

Now comes Otto Eisenschiml, the plaintiff in the above entitled cause, by Elmer Gertz, his attorney, and objects to the "final report" of the Honorable Joseph A. Graber, Special Master herein, filed in the Office of the Clerk of this Court on January 20, 1956 (a copy of which reached the plaintiff's attorney on January 23, 1956, at around 11:00 a.m.), in the following particulars, to wit:

1. To the unnumbered first paragraph consisting of the first ten (10) lines on page 2 of the said "final report," in support of which objection there is attached hereto, marked Exhibit "A" and expressly made a part hereof, a true and correct copy of the letter dated January 13, 1956, from Elmer Gertz, as plaintiff's attorney, to the Honorable Joseph A. Graber, Special Master herein, and in further support of which objection plaintiff reserves the right to file a brief in addition to and
907 supplementing the brief heretofore, on January 9, 1956, filed for him with the Clerk of this Court. No response of any kind was made by the Special Master to this letter of January 13, 1956, unless his "final report" is to be construed as an answer.

2. To the First numbered paragraph on page 2 of the said "final report," for the reason that no where in the said paragraph or elsewhere in the reports of the Special Master are there any findings as set forth in Plaintiff's Suggested Findings of Fact, No. (75), heretofore filed with the Special Master and later with the Clerk of this Court and incorporated in the exceptions hereto and to the Master's earlier report by reference with the same force and effect as if set forth herein in full.

3. To the Second numbered paragraph on page 2 of the said "final report" for the reasons set forth on all except the first six lines on page 5 and the first six lines on page 6 of the Plaintiff's Brief filed with the Clerk of this Court on January 9, 1956.

4. To the Third numbered paragraph on pages 2, 3 and 4 of the said "final report" and each and every part thereof, for the reason that the Master's descriptions of the exhibits mentioned in the said paragraph are incomplete and inaccurate in each instance as is shown by an examination of each such exhibit and the evidence in connection therewith, and indicates that the Master misconstrued and misunderstood each such exhibit, and the Master admits in said finding that he had not seen all of the exhibits themselves when preparing his original report and that the present finding is only an after-
908 thought and not based upon an objective and fair analysis of all of the said exhibits, all as more fully argued in Plaintiff's Brief, heretofore filed herein, and in the additional brief to be filed by the plaintiff herein.

5. To the Fourth numbered paragraph on page 4 of the said "final report," in support of which objection the plaintiff incorporates herein by reference, with the same force and effect as if set forth herein in full, his exceptions to the original report of the Special Master (which exceptions were filed with the Clerk of this Court on January 4, 1956), his Brief in support of his said exceptions (which Brief was filed with the Clerk of this Court on January 9, 1956), the Plaintiff's Suggested Findings of Fact and Conclusions of Law (which were filed with the Master originally and then, on January 4, 1956, with the Clerk of this Court), the Plaintiff's Exhibits which were filed with the Clerk of this Court on January 4, 1956, and the entire record herein. In further support of this objection and of all of the Plaintiff's objections to the original and

final reports of the Special Master, the plaintiff reserves the right to file an additional brief.

Dated January 24, 1956.

909 EXHIBIT "A"
January 13, 1956
(Filed Jan 24 1956)

Honorable Joseph A. Graber
7012 South Shore Drive
Chicago 49, Illinois

Dear Judge Graber:

Re: Otto Eisenschiml
vs.
Fawcett Publications, Inc.,
a Delaware Corporation
Civil Action No. 53 C 1912

I am in receipt of a letter from Messrs. J. B. Martineau and Dr. D. H. Reuben of Kirkland, Fleming, Green, Martin & Ellis, dated January 12, 1956, purportedly in answer to mine of January 10, 1956.

My letter of January 10, 1956, was not disrespectful in tone; it was intended to clear up what appeared to me to be a confused situation. Let me make it clear at once that I am perfectly willing to appear before the Master or the Court, or anyone else, in order to argue against what I believe to be errors in the Report. I am not refusing to appear anywhere, and counsel is simply putting words in my mouth.

Let me sum up my viewpoint, so that there will be no further misunderstanding, real or assumed.

The Master's Report was not called a draft report. There was nothing to indicate that it was anything except a final report. It was filed with the Clerk of the United

States District Court, as if it were the final report. In sending a copy to me, the Clerk of the Court expressly declared it to be such. He did not say that it was a draft report under Rule 53 (5) permitting a draft report. His letter of December 28, 1955, said:

> "Pursuant to Rule 53 (e) (1) of the Rules of Civil Procedure for District Courts of the United States, you are hereby notified that the Honorable Joseph A. Graber, Special Master in Chancery, filed his Report, a copy of which is attached, on December 28, 1955."

910 That being the case I naturally presumed that we were, and are, bound to follow the usual rules, not of the Illinois State Courts as suggested by defendant's counsel, but of the United States District Court. This I have done; and I expect the defendant's counsel to do likewise, and to file a Brief in response to mine, and then I can file a reply brief. It seems clear to me that any oral argument, whether before the Master of the Court, should follow, and not precede, the filing of all briefs.

Defendant's counsel made a generalized statement that there is no merit to our case. More satisfactory than any generalized statement will be a specific response to our objections and brief.

We are grateful to counsel for saying that we are entitled to our day in court.

In conclusion, let me say again that I am not refusing, or agreeing, to do anything in particular in this matter, except to follow the rules of court and the usual procedure, to the end that the best interests of my client and justice will be served.

May I hear from you at your earliest convenience on this matter?

Respectfully submitted,

Elmer Gertz

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MEMORANDUM
(Filed Apr 26 1956)

This is an action for alleged infringment by defendant of plaintiff's copyright of two books, called "Why Was Lincoln Murdered" and "In the Shadow of Lincoln's Death". A reference was made to a Special Master, who heard the evidence (compiling a record of 2550 pages), examined the exhibits, ruled on numerous objections, and submitted two reports embodying detailed findings of fact. The case is now before the Court on plaintiff's exceptions to those reports.

Plaintiff's two books are published in hard-cover from, are in length over 500 and 400 pages respectively, and in tone serious historical studies lavishly footnoted. The allegedly infringing piece is a story or article by Joseph Millard, a free lance author, which was published by defendant in "True Magazine". It is called "America's Greatest Unsolved Murder", is in length about 20,000 words, and is written in a style appropriate to a magazine with a wide circulation. All three works are concerned with a detailed study of the assassination of Abraham Lincoln. All three, by emphasizing many esoteric and significant events which preceded and followed the assassination, lead the reader to the conclusion that various prominent persons of the period, notably Secretary of War Stanton, had at least some form of guilty knowledge of the conspiracy, Eisenschiml is an acknowledged
913 authority in the field of Civil War history, and the narrower field of the assassination in particular. He spent many years and an enormous amount of energy and work in the preparation of the books here in suit. Millard testified that in addition to research he had previously done in connection with other articles about the same

historical period, he did about three months' intensive work in preparation for and writing this article. Since he was writing what he hoped would be an entertaining tale rather than a learned treatise, he told his story without direct citation of authority. Therefore, in preparation for his testimony in this case, it was necessary for him to reconstruct the composition of the article from the notes and authorities which he had used. This must have been a tremendous job, which he executed conscientiously. The list of references which he consulted is set out in the record and in the Master's Findings of Fact, and is an impressive one.

As proof of infringment, plaintiff relies heavily on various excerpts from his two books and from Millard's article, which he insists are so nearly identical as to prove copying by Millard. Plaintiff's expert, Donald W. Riddle, read into the record what he described as "85 instances of parallelism", of which he said 13 showed "identity of language of from 13 to 33 words". So far as those involving identical language is concerned, each is a direct quotation by the authors from another source. Illustratively, Booth is supposed to have shouted to a fellow conspirator, "I am pretty certain that we have assassinated the President and Secretary Seward". Dr. Riddle cited the thirteen quoted words as identical—which of course they are, and could hardly escape being so. This quotation is given 914 in both Pittman, "The Assassination of President Lincoln" (page 86), and Poore, "Conspiracy Trial for the Murder of the President" (page 119), as well as other sources used by Millard. The same is true of most of the quotations cited by Dr. Riddle. In a few instances, Millard appears to have relied on plaintiff for a quotation from a third person. For example, Eisenschiml set forth a facsimile of a letter from Mrs. Lincoln recommending the appointment of the guard Parker to the President's

staff. This letter was in Eisenschiml's possession, and Millard could not have referred to it directly. This is of course unimportant. The plaintiff can hardly hope to copyright Mrs. Lincoln's choice of language (17 U.S.C.A. sec. 8; Du Puy *v.* Post Telegram, 210 Fed. 883, 884 (1914). In any event, as the Master has quite correctly found, this type of use of plaintiff's work by Millard is insignificant. Certainly it lends no support to a charge of copying substantial portions of the copyrighted books (Matthews Conveyor Co. *v.* Palmer-Bee Co., 135 F. 2d 83, 85 (C. A. 6, 1943)).

The seventy-two "instances of parallelism" cited by Dr. Riddle which do not involve identity of language are equally unimpressive. They are all descriptions of historical events; a few examples will suffice to indicate their nature. Thus both authors state that the news of Lincoln's death was circulated in New England twelve hours before it actually occurred. Eisenschiml cites as his authority for this item "Fifty Years in the Church of Rome" by C. Ciniqui; Millard testified that he used this source as well as "Assassination and History of the Conspiracy" (1865). A use of the same authorities also explains the references of both authors to Mrs. Lincoln. Eisenschiml and Millard both explain the Grants' refusal to attend Ford's Theater with the Lincolns by showing that 915 Mrs. Grant had previously been exposed to embarrassment by public demonstrations of Mrs. Lincoln's jealousy. Since the theater had advertised that the Grants would be present that night, their absence had long been regarded as something of a mystery, and many historians, in seeking to vindicate the Grants, have used the same explanation. Eisenschiml's account bears a close resemblance to that of Adam Badeau in "Grant in Peace", which he cites. Millard testified that his comment "Twice the sensi-

tive Julia Grant had been publicly humiliated by Mrs. Lincoln's shrieking jealousy", was based on Badeau and on "Meet General Grant" by Woodward. Certainly there is no reason to disbelieve him. The same sort of analysis disposes of most of the other instances of "parallelism". Thus the Masters findings that Millard did not copy from the plaintiff, but used independent sources of research, and that any resemblance between his work and plaintiff's is explained by the use of common sources, are supported by the record. Not only Millard's sworn word, but all the circumstances, indicate clearly that he did not copy from plaintiff. No one can copyright the facts of history, and Millard was at liberty to seek them in the same sources used by plaintiff. (Oxford Book Co. *v.* College Entrance Book Co., 98 F. 2d 688, 681 (C.C.A. 2, 1938); Funkhouser *v.* Loew's Inc., 208 F. 2d 185, 190 (C.A. 8, 1953); Fred Fisher, Inc., *v.* Dillingham, 298 Fed. 145, 151 (S.D.N.Y., 1924).

In short, plaintiff's case so far as it depends on "parallelism" is unconvincing. (Bachman *v.* Belasco, 224 Fed. 817, 818 (C.C.A. 2, 1915); Christie *v.* Harris, 47 F. Supp. 39, 40 (D.C., N.Y., 1942) (aff. 154 F. 2d 827). There remains for consideration his additional theory that his copyright is violated by Millard's agreement with or adoption of inferences drawn by him from his research. In many of the instances of agreement, it is apparent that the two authors reached the same conclusion from 916 an examination on the relevant historical facts. Such an identity of opinion is of course no more subject to stricture, or a violation of the copyright laws, than the parallelism of fact statements discussed above. There are, however, a very few instances in which Millard did not do his own research, but adopted the plaintiff's historical theories. Thus Eisenschiml asserted in "In the Shadow of Lincoln's Death" that no one had ever re-

corded the exact time when Lincoln was shot, but that the event actually occurred at 10:13 P.M. He arrived at this deduction by a chain of reasoning from various clues taken from the testimony of one of the witnesses at the Surratt trial. The information the Lincoln was shot at 10:13 P.M. is stated as a historical fact; and if that is what it is, it is beyond the reach of copyright (Oxford Book Co., supra). If, however, the same statement be accepted as plaintiff's original guess as to when the event probably occurred, it still may not be monopolized by him. (Moore *v.* Ford Motor Co., 28 F. 2d 529, 539 (D.C., S.D. N.Y., 1928). Ideas and theories, however original, and whatever the time and labor required to produce them, are not subject to copyright (Crume *v.* Pacific Mutual Life Ins. Co., 140 F. 2d 182, 183 (C.A. 7, 1944); Baker *v.* Selden, 101 U.S. 99, 103 (1879). An idea, speculation or opinion is published so that it may add to and advance the total knowledge in a particular field. The purpose of communicating it in this way is to persuade others to agree with it, or to expose it to criticism so that its accuracy may be tested. This purpose could not be served were it subject to copyright. Eisenschiml himself appears to
917 have subscribed to this belief and to have published his books with this purpose. He wrote to Millard: "Since my two books came out I have been hoping against hope that someone else may take up where I left off and find additional material, either in confirmation or in refutation. * * * What we want is the truth, and I don't care much whether I am shown to be right or wrong".

In summary, plaintiff has failed to prove his case. Infringment of a copyright is a tort, and the plaintiff, to be successful, must prove a substantial copying. (Oxford Book Co. supra, at 692; Frankel *v.* Irwin, 34 F. 2d 142, 143 (D.C., S.D.N.Y., 1918). Not only are the Master's findings here not "clearly erroneous" (Federal Rule of Civil

Procedure 53 (e) (2)), they are, on the contrary, clearly correct and fully supported by the evidence.

Plaintiff has urged various objections to the procedure before the Master. His animadversion on the subject is unwarranted. An examination of the record makes it clear that the numerous hearings were conducted by the Master with complete propriety and imartiality, and that all the evidence had his conscientious attention.

The Master has further found that plaintiff's case is without merit and that under Title 17 U.S.C. sec. 116, defendant is entitled to recover reasonable attorney's fees as well as costs of the suit. This finding is also correct.

The Masters reports are accordingly confirmed in full. A re-reference will be made to the Master to determine the amount of attorney's fees.

/s/ Philip L. Sullivan
Philip L. Sullivan, Judge

April 26th 1956

918

This cause coming on for ruling on objections to Master's Reports come the parties by their counsel, said reports are confirmed in full and re-reference will be made to the Master to determine the amount of attorney's fees. The Court files its Memorandum Opinion and it is

Ordered that the defendant shall submit draft order on April 30, 1956 at 10:00 A. M.

919

ORDER

(Filed April 30, 1956)

This cause having come on to be heard by the Court upon the complaint of Otto Eisenschiml, answer to Fawcett Publications, Inc., a Delaware corporation, filed thereto, the report and supplemental report of Joseph A. Graber, Special Master of this court, to whom this cause

was referred, the transcript of the testimony taken before such Special Master, the exhibits introduced in the hearing before such Special Master, and upon the objections filed by the plaintiff to the reports of the Special Master, and the Court having examined the pleadings, the evidence, the exhibits, the Special Master's reports and the objections thereto, and having heard the arguments of counsel for the respective parties, and the Court being fully advised in the premises finds:

920 1. That the Court has jurisdiction of the parties hereto and the subject-matter hereof.

2. That the Special Master did proceed in all respects in accordance with the law and the order of reference herein.

3. That the Special Master's report and supplemental report should be sustained, confirmed, adopted and approved, that the objections to said reports should be overruled, and that the fees of the Special Master amounting to $7500.00 as set forth in his report are proper and reasonable and should be taxed as costs against the plaintiff herein.

4. That the article written by Joseph Millard and published in the February 1953 issue of True Magazine by the defendant under the title of "America's Greatest Unsolved Murder" did not in any way infringe upon or copy any copyrighted material contained in the plaintiff's two separate works, "Why Was Lincoln Murdered" and "In the Shadow of Lincoln's Death," and said work of Joseph Millard is an independent literary creation based upon independent research.

5. That whatever use Joseph Millard may have made of Otto Eisenschiml's works is non-actionable because it was an insignificant use, a fair use, or use of non-copyrightable material.

6. That the defendant incurred no liability whatsoever to the plaintiff as a result of its publishing the said
921 article entitled "America's Greatest Unsolved Murder," in its February 1953 issue of True Magazine.

7. That during the time that this cause was being heard by the Special Master, each of the parties hereto deposited with the Special Master as a security for his reasonable fees the sum of $1500.00 and the defendant is entitled to recover judgment against the plaintiff for its portion of said deposit, being the sum of $1500.00.

8. That the equities in this cause are with the defendant and against the plaintiff and plaintiff's complaint and each count thereof should be dismissed for want of equity.

9. That plaintiff's case lacks any merit whatsoever and thus the defendant is entitled, pursuant to the statute in such case made and provided, to recover a reasonable attorney's fee from the plaintiff as well as all proper costs of this suit.

It Is Hereby Ordered:

1. That the objections filed to the report of Joseph A. Graber, Special Master of this Court to whom this cause was referred, be and the same are hereby overruled and said report and supplemental report of said Special Master be and the same are hereby sustained, confirmed, adopted and approved in all respects.

2. That the plaintiff, Otto Eisenschiml, be and he is hereby ordered to pay to the defendant, Fawcett Pub-
922 lications, Inc., as and for reimbursement to said defendant the sum of $1500.00, which sum the defendant has deposited with the Special Master as hereinabove set forth.

3. That the plaintiff, Otto Eisenschiml, be and he is hereby ordered to pay to the Special Master, Joseph A. Graber, the additional sum of $4500.00 for and on behalf of said Special Master's unpaid fee.

4. That the written opinion of this Court filed in this cause on April 26, 1956, be and the same is hereby incorporated in this order with the same force and effect as if the same were specifically set forth herein.

5. That this cause be and the same is hereby re-referred to the said Special Master, Joseph A Graber, with directions to take and hear evidence as to the amount of attorney's fees reasonably expended by the defendant in defense of this suit and to report the same back to this Court, togeteher with his conclusions of fact and law.

6. That jurjsdiction of this cause be and the same is hereby retained by this Court for the purpose of entering final judgment dismissing plaintiff's complaint for want of equity, awarding judgment to the defendant for defendant's reasonable attorney's fees and all of its costs
923 herein expended, and for assessing any Master's fees that might subsequently be incurred.

Enter

/s/ Philip L. Sullivan
Philip L. Sullivan, Judge

Dated: April 30, 1956

924

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Otto Eisenschiml,
Plaintiff-Appellant,
vs.
Fawcett Publications, Inc., a Delaware Corporation,
Defendant-Appellee.
No. 53 C 1912

NOTICE OF APPEAL.
(Filed May 22, 1956)

Notice is hereby given that Otto Eisenschiml, plaintiff herein, hereby appeals to the United States Court of

Appeals for the Seventh Circuit from the judgment order against plaintiff entered in this action on April 30, 1956.

Elmer Gertz and Irwin S. Baskes
/s/ By Elmer Gertz
Attorneys for Appellant,
Otto Eisenschiml,
120 S. La Salle Street,
Chicago 3, Illinois,
RAndolph 6-6116.

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United States of America, }
Northern District of Illinois }

• • (Caption—No. 53 C 1912) • •

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on the 22nd day of May, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Howard Ellis, J. B. Martineau, Don H. Reuben
Kirkland, Fleming, Green, Martin and Ellis
Prudential Plaza, Chicago 1, Illinois

Joseph A. Graber
7012 South Shore Drive
Chicago 49, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 22nd day of May, 1956.

Roy H. Johnson
Clerk

By Gizella Butcher
Deputy Clerk

(Seal)

926-929 • • •

930

APPELLANT'S STATEMENT OF POINTS.
(Filed May 29 1956)

Appellant, Otto Eisenschiml, plaintiff in the above entitled cause, intends to rely on the following points:

1) The Special Master and Court erred in improperly admitting certain of defendant's exhibits in evidence and in not permitting certain of plaintiff's exhibits to be admitted in evidence.

2) The Special Master and Court erred in not examining or considering various exhibits that were received in evidence, and in not making findings in connection therewith.

3) The Special Master and Court erred in not considering, and in not making findings with respect to, certain admissions of the defendant and its witnesses.

4) The Special Master and Court erred in not considering, and in not making findings with respect to and, certain uncontradicted and unimpeached testimony of witnesses.

5) In making their findings of fact and conclusions of law the Special Master and Court:

a) Erred in finding that the special Master did
931 proceed in all respects in accordance with the law.

b) Erred in finding that the Special Master's report and supplemental report should be sustained, confirmed, adopted and approved, and that the objections to said reports should be overruled.

c) Erred in finding that the fees of the Special Master are proper and reasonable and should be taxed as costs to the plaintiff herein.

d) Erred in finding the article written by Joseph Millard and published in the February 1953 issue of True Magazine by the defendant under the title

of "America's Greatest Unsolved Murder" did not in any way infringe upon or copy any copyrighted material contained in the plaintiff's two separate works, "Why Was Lincoln Murdered" and "In the Shadow of Lincoln's Death," and that said work of Joseph Millard is an independent literary creation based upon independent research.

e) Erred in finding that whatever use Joseph Millard may have made of Otto Eisenschiml's works is non-actionable because it was an insignificant use, a fair use, or use of noncopyrightable material.

f) Erred in finding that the defendant incurred no liability whatsoever to the plaintiff as a result of its publishing the said article entitled "America's Greatest Unsolved Murder", in its February 1953 issue of True Magazine.

932 g) Erred in finding that the equities in this cause are with the defendant and against the plaintiff and that plaintiff's complaint and each count thereof should be dismissed for want of equity.

h) Erred in finding that plaintiff's case lacks any merit whatsoever and that the defendant is entitled to recover a reasonable attorney's fee from the plaintiff as well as all proper costs of this suit.

6) The Special Master and Court erred in making their conclusions of law.

7) The Court erred in refusing to enter summary judgment in favor of the plaintiff.

8) The Special Master and Court erred in not having made the findings of fact set forth in plaintiff's Suggested Findings of Fact, and particularly those enumerated in plaintiff's objection No. 15 to the Special Master's Report.

9) The Court erred in not having taxed costs and fees, as well as damages and profits, against the defendant.

10) The Special Master and Court erred in not finding that defendant appropriated plaintiff's research.

11) The Special Master and Court erred in not finding that defendant copied the language, substance, concepts, arrangement, style, treatment and essence of plaintiff's said two books.

933-941 • • •

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This cause coming on for hearing on the plaintiff's motion to stay proceedings pending appeal come the parties by their counsel and upon due consideration the Court being fully advised it is

Ordered that the proceedings be stayed upon filing of supersedeas bond by the plaintiff.

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This day comes the plaintiff by its counsel and presents for approval his Supersedeas Bond in the amount of Seven Thousand Dollars ($7,000.00) and it appearing to the Court that said bond is properly conditioned and that the sureties are good and sufficient security for said amount it is

Ordered that said bond be and the same hereby is approved and ordered to be filed with the Clerk of this Court.

944-947 • • •

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PETITION
(Filed Jun 28 1956)

Now comes Joseph A. Graber, duly appointed Special Master in Chancery herein by the Honorable Judges of the United States District Court for the Northern Dis-

trict of Illinois, Eastern Division, by his attorney, Eugene J. Graber, and represents unto this Court as follows:

1. That on the 30th day of April, 1956, this Court entered an order approving and sustaining the Special Master's Reports heretofore filed herein and approving Special Master's fees of $7,500. Said order assessed the Special Master's fees against the plaintiff, the unsuccessful party herein. The plaintiff and defendant having previously deposited with the Special Master the sum of $1,500.00 each, the said order provided that the plaintiff should pay to the Special Master an additional sum of $4,500.00 which when added to the $3,000.00 deposit of the parties would be full payment for the Special Master's fees allowed by this Court.

2. That the Special Master as more fully appears from his Reports filed herein had asked this Court to approve Master's fees in the sum of $6,000.00. The Special Master did not discover this discrepancy between the amount
949 requested for Master's fees and the amount allowed until shortly before the filing of this petition.

3. That prior to the Special Master's discovering the said discrepancy the plaintiff herein filed Notice of Appeal to the Court of Appeals for the Seventh Circuit and therefore this Court is presently unable to modify its order of April 30, 1956, having lost jurisdiction to do so at the time of the filing of said Notice of Appeal.

4. That the Special Master desires to have the discrepancy between the amount he has requested for fees and the amount allowed by the Court eliminated by filing herein a satisfaction setting forth that the plaintiff has paid $1,500 to the Master since the entry of the order of April 30, 1956. The plaintiff herein has not paid to the Special Master any monies whatsoever subsequent to the entry of said order and thus said satisfaction will result in reducing the obligation of plaintiff to the amount of

$3,000.00 which obligation together with the deposits heretofore received by the Special Master aggregate the amount of fees the Special Master requested be approved in his Reports.

5. That subsequent to the filing of said Notice of Appeal the plaintiff posted a surety bond securing the defendant for costs. However, plaintiff has filed no bond securing the Special Master for the payment of his fees due pursuant to the order of April 30, 1956. The Special Master asks the Court to give him judgment against the plaintiff for $3,000.00 and issue execution thereon unless plaintiff files herein a surety bond in favor of the Special Master and for the sum of $3,000.00.

950 Wherefore, the Special Master prays:

1. That this Court enter an order granting him leave to file a satisfaction reciting that $1,500.00 of the $4,500.00 sum ordered to be paid to the Special Master by the plaintiff herein by the order of April 30, 1956, has been paid by plaintiff.

2. That the Special Master be given judgment against the plaintiff for $3,000.00 and that execution of said judgment be stayed only if the plaintiff files herein a surety bond in favor of the Master and for the sum of $3,000.00.

/s/ Joseph A. Graber

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PARTIAL SATISFACTION

(Filed June 28, 1956)

Whereas, by order of this Court entered on the 30th day of April, 1956, the plaintiff, Otto Eisenschiml, was ordered to pay to Joseph A. Graber as Special Master the sum of Seventy-Five Hundred and no/100 ($7500.00) Dollars as and for his Special Master's fees, Joseph A.

Graber, Special Master in the above entitled cause, does hereby acknowledge the sum of Fifteen Hundred and no/100 ($1500.00) Dollars in partial satisfaction of the order entered herein on April 30, 1956, this 28th day of June, A. D. 1956, and the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, is hereby authorized and empowered to enter partial satisfaction of said order of record to the extent of Fifteen Hundred and no/100 ($1500.00) Dollars.

Joseph A. Graber
Special Master
By Eugene J. Graber
Attorney for Special Master

* * *

953-963 * * *

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ORDER

Pursuant to the Stipulation of the parties, filed herein this day.

It Is Ordered that the Clerk of this Court, in preparing and transmitting the Record on Appeal in this cause in the pending Appeal of the plaintiff, Otto Eisenschiml, to the United States Court of Appeals for the Seventh Circuit, be and is hereby authorized and directed to proceed in accordance with and pursuant to the provisions of Rule 12 of the Rules of the United States Court of Appeals for the Seventh Circuit, effective July 1, 1956.

Enter: Julius Hoffman
Judge

Dated at Chicago, Illinois
this 9th day of July, 1956.

965 United States of America } ss:
Northern District of Illinois }

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the cause entitled: Otto Eisenschiml, Plaintiff *v.* Fawcett Publications, Inc., a Delaware Corporation, Defendant, No. 53 C 1912, as follows:

Complaint, filed September 16, 1953.

Notice and Answer of Defendant, filed November 9, 1953

Order entered December 14, 1953, giving plaintiff leave to file Motion for Summary Judgment

Notice and Plaintiff's Motion For Summary Judgment, with Affidavit of Plaintiff and Exhibits A, B and C attached thereto, filed December 14, 1953 (Plaintiff's Exhibit 7)

Notice and Affidavit of Joseph Millard, filed January 28, 1954

Transcript of Proceedings Had Before The Honorable Philip L. Sullivan, On February 11, 1954, and filed June 20, 1956

Order entered February 11, 1954, referring cause to Special Master James O'Shaughnessy

Transcript of Proceedings Had Before The Honorable Philip L. Sullivan, on February 15, 1954, and filed June 20, 1956

Order entered February 15, 1954, vacating order of reference to Special Master James O'Shaughnessy

Notice and Defendant's Response to Plaintiff's Request For Admissions, filed February 25, 1954 (Plaintiff's Ex. 6-A id)

Notice and Answers To Interrogatories, filed March 1, 1954 (Plaintiff's Ex. 6-B id)

Notice and Defendant's Response To Plaintiff's Request For Admissions, filed March 8, 1954 (Plaintiff's Ex. 9A-id)

Petition of Plaintiff Otto Eisenschiml, filed September 20, 1954

Transcript of Proceedings Had Before The Honorable Philip L. Sullivan, on September 20, 1954, and filed June 20, 1956

966 Order entered September 20, 1954, referring cause to Master in Chancery Joseph A. Graber

Notice and Defendant's Response to Plaintiff's Request for Additional Admissions, filed October 5, 1954 1954

Deposition of Joseph Millard filed October 28, 1954

Deposition of Ralph Daigh, filed October 28, 1954

Stipulation, with Interrogatories Propounded by Plaintiff and Defendant to Mrs. Joseph J. Millard and Cross-Interrogatories Propounded by the Plaintiff, Otto Eisenschiml, to Mrs. Joseph J. Millard (Without Prejudice To Objections To Direct Interrogatories), attached, filed November 22, 1954

Deposition of Mrs. Joseph J. Millard on Written Interrogatories and Cross-Interrogatories, filed December 3, 1954

Oath of Office of Joseph A. Graber, filed March 3, 1955

Notice of Clerk of the District Court of the filing of Special Master's Report, dated December 28, 1955

Special Master's Report and Notice Attached, filed December 28, 1955

Notice of Filing Objections to Special Master's Report, certain exhibits and suggested Findings, Exceptions of Plaintiff to Special Master's Report with Exhibits A and B attached, filed January 4, 1956

Plaintiff's Suggested Findings of Fact, filed January 4, 1956

Special Master's Final Report filed January 20, 1956

Exhibits in this cause filed by Special Master on December 28, 1955, together with Transcript of Proceedings Had Before Special Master, filed December 28, 1955 (transmitted separately for convenience)

Notice of Clerk of the District Court of the filing of Special Master's Report, dated January 20, 1956

Notice of filing Objections to the Special Master's Final Report and Renewing Objections to Special Master's Original Report, Exceptions of Plaintiff to Special Master's Final Report, with Exhibit A attached, filed January 24, 1956

Order entered January 27, 1956, allowing time for filing briefs in support of and opposition to Special Master's Report.

967 Memorandum Decision of the Court, filed April 26, 1956.

Order entered April 26, 1956 confirming Master's Reports

Judgment Order entered April 30, 1956.

Plaintiff's Notice of Appeal filed May 22, 1956 (Clerk's Certificate of Mailing Attached)

Appellant's Designation of Contents Of Record On Appeal, filed May 29, 1956

Appellant's Statement of Points, filed May 29, 1956

Notice and Appellee's Designation of Additional Portions of Record On Appeal filed June 5, 1956

Plaintiff's Notice of Motion and Motion to Stay Proceedings, filed June 4, 1956

Order entered June 4, 1956 staying proceedings upon filing of Supersedeas Bond by the Plaintiff

Order entered June 5, 1956 approving Supersedeas Bond in the amount of $7,000.00 (Bond filed but not transmitted herewith)

Stipulation for extension of time for filing of record on appeal filed June 27, 1956

Order on Stipulation extending time for filing record on appeal to July 31, 1956, entered June 27, 1956

Notice of Motion and Petition of Special Master Joseph A. Graber, filed June 28, 1956

Order entered June 28, 1956 allowing Special Master to file a partial satisfaction in the sum of $1,500.00

Partial Satisfaction of Special Master Joseph A. Graber, filed June 28, 1956

Transcript of Proceedings had Before The Honorable Philip L. Sullivan, On June 28, 1956, and filed July 17, 1956

Appearance of A. L. Hodson as additional counsel for defendant, filed July 2, 1956

Stipulation filed July 9, 1956

Order entered July 9, 1956 pursuant to stipulation authorizing Clerk of the District Court to prepare and transmit record on appeal pursuant to the provisions of Rule 12 of the Rules of the United States Court of Appeals, for the Seventh Circuit, effective July 1, 1956

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 30th day of July, 1956.

Roy H. Johnson
Clerk

(Seal)